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The Market For Legal Services

Paraprofessionals and Specialists

Prepared by
**Selma Colvin, David Stager, Larry Taman,
Janet Yale, Frederick H. Zemans**
for
The Professional Organizations Committee

This working paper was commissioned by
The Professional Organizations Committee,
but the views expressed herein are those of the authors
and do not necessarily reflect the views of the
members of the Committee or of the Research Directorate.

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WORKING PAPER
#10

THE MARKET FOR LEGAL SERVICES
Paraprofessionals and Specialists

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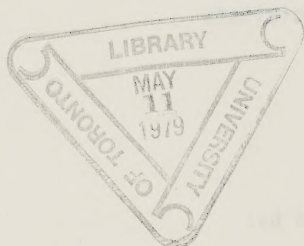
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THE MARKET FOR LEGAL SERVICES

Paraprofessionals and the



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I. Introduction

A. Survey of Issues to be Addressed

B. Summary of Research Methods

1. Literature
2. Survey Data
3. Investigations
4. Submissions

I. Introduction

A. Survey of Issues to be Addressed

This working paper is focused primarily on two questions

- (i) What are the appropriate roles, if any, of para-professionals, in the practice of law? and
- (ii) What is the appropriateness, if any, of specialty designations, in the practice of law?

We have attempted to cast our approach to these problems in terms which are, at root, economic. We have aspired not to lose sight of the fact that justice, the goal of the system, may transcend the narrower scope of economic analysis. Accordingly, four chapters on the 'Economic Analysis of the Market for Lawyers' Services' is prefaced by a brief chapter on 'Justice and Economics'. In this latter chapter, we explore the limits of economic analysis as we see them in this context.

Our economic analysis will provide some data on what lawyers do. We have gathered data on the kinds of work being done by specialists and the kinds of legal work, both within and without the traditional professional setting of the private law office, being done not by lawyers at all but by legal paraprofessionals. We have explored the skills that the specialists and the paraprofessionals bring to bear on their work. We have looked at their recruitment, training and employment.

We have concluded with a series of questions which assimilate the particular concerns of the working paper with the broader public

policy concerns centering on the regulation of professions. How much regulation is enough? How much is too much? Who ought to regulate? What is the strength of the case for substantial de-regulation of the market for legal services?

In exploring ways in which the efficient functioning of the market for legal services might be enhanced, two major themes run through the balance of this paper: first, an analysis of how para- and allied-professionals might be more fully utilized in the delivery of legal services; secondly, to the extent that lawyers are judged to be necessary for the provision of certain kinds of legal services, an assessment of how improved information flows between lawyers and the public, for example through specialty certification programs and relaxed rules on advertising, might produce better matching of lawyer services with client needs.

B. Summary of Research Methods

1. Literature: We have extensively reviewed the relevant literature in English and French in Canada and abroad.
2. Survey Data: The Professional Organizations Committee's staff conducted certain research through the use of survey instruments, copies of which are appended. These have been described in the text where most pertinent but are here referred to for convenience.
 - a) Survey of Firms: A survey of law firms in the Province.
 - b) Client Survey: A survey of a randomly selected group of lawyers' clients whose names were obtained from the public record.
 - c) Survey of Paralegals: A survey of those with training as lay legal workers designed to explore their career patterns.
3. Investigations: The Committee's staff carried out a number of detailed enquiries of specialists and lay legal workers. These were not designed with a view to rigorous statistical validity but rather as techniques for some first hand observation of what people involved in delivering legal services actually do. We also took a detailed look at three types of workers outside the private law office who do work which is in some respects like the work done by lawyers -

insurance claims adjusters, trade union representatives, and patent attorneys. In these latter cases, our concern was not to investigate these occupations as such but rather to search out alternative techniques of recruitment, training, supervision and regulation in law-related jobs.

4. Submissions: We have had the substantial benefit of the generous submission of fact, opinion and suggestion by a number of interested individuals and groups in response to our requests for such participation.

II. Justice and Economics

A. Externalities

B. The Roles of the Legal Professional

- (i) The Anticipatory Role
- (ii) The Creative Role
- (iii) The Organizing Role
- (iv) The Negotiator's Role
- (v) The Litigation Role

C. The Policy Responses

Footnotes

II. Justice and Economics

A. The Externalities

There is cause for concern in contemplating the prospect of a totally unregulated market in legal services. First, the maximum efficiency aspired to under the economists' model of perfect competition is conditioned on perfect information - every player in the market must be fully apprised of all the information necessary to make the choice which meets his needs at the lowest cost. When unsophisticated consumers make purchases in a market for services as sophisticated as legal services, there is reason to fear that the information gap between what the consumer knows and what he needs to know if he is to be a wise judge of his own interests is insurmountable. The private costs of poor judgment traced to poor or incomprehensible information may be very substantial. In such a situation, the policy maker may properly seek ways to protect the unwary from the incompetent or dishonest supplier of services.

Worse yet, the social costs of incompetent service may exceed the private costs. The fully informed consumer may find that his own needs are best served by a plumber of minimal or sub-standard competence who charges rates far below those otherwise obtaining in the market. Other consumers not consulted when this choice was made may regret that the water supply of the whole city was polluted because of the incompetence of one plumber. They might be forgiven for thinking that where the social costs

of faulty service exceed the private cost to the individual consumer, the market ought not to reign supreme.

Whatever one might think of the desirability of protecting consumers from the private consequence of their own misjudgments, there is cause for real concern that in the legal services market, the social costs of low quality service might be substantial indeed. It would not, for example, be difficult to hypothesize a case in which the marginal benefit to an accused of securing his acquittal would not justify the cost necessary to purchase an adequate defence. The social costs in the form of widespread disrespect for law and disinclination to conform to its prescriptions associated with a criminal justice system in which the outcomes of a significant percentage of criminal trials were thought to be wrong and unjust is incalculable. This imponderable cost might be thought to justify the introduction of a regulatory system which would restrict the right to supply such services to those who can be trusted to supply services of sufficiently high competence to maintain the integrity of the criminal justice system.

The legal system may be seen primarily as a claims system - a complex of public and private organizations which handle claims of numberless variety among citizens and between citizens and the state. In any society, the proper function of its dispute solving mechanisms must be socially guaranteed as a matter of public policy of the highest priority. When the case

can be made that some part of the system can only be offered by restricting the right to offer services to the specially trained, then this should unquestionably be done. Were private and social costs, of the sort just alluded to, incurred with regularity in a system where the market was opened to all those who could find buyers for their services, the viability of the whole system would soon be called into question.

At the same time, regulation need not be the blunt instrument it presently is. There is a broad spectrum between 'lawyers' work' and 'non-lawyers' work' which might successfully be performed by personnel with various sorts of experience and education. At no point should we accept with equanimity a regulatory regime which fails to match with decent precision varying law jobs to required skills. Every instance of an over-qualified professional performing work which might be performed at lower cost by a less skilled person is a serious regulatory failure. It is a failure of allocative efficiency. Yet when every possible adjustment has been made to guarantee allocative efficiency in the legal services market, there can be no justice unless there is universal access to law. The policy requirements in this area have recently been investigated elsewhere¹ and we shall not address them here. Suffice it to say that it must be fully understood that whatever regulatory initiatives are contemplated to enhance the efficiency of the market must be complemented by constant efforts to guarantee

as a right of citizenship that everyone has sufficient access to legal services to press his or her reasonable claims.

B. The Roles of the Legal Professional

Legally trained persons presently run the legal system. They are its theorists, its architects, its journeymen and its labourers. They play an important role in the legislative process. They monopolize judicial dispute resolution. As specialists, generalists and paralegals they supply an unknown, but surely significant part of the demand for legal services. Exactly what they do is not known with the certainty one might wish. In a general way, we might note the following roles in the civil justice process.

- (i) The Anticipatory Role: The best advice is the advice received before the problem becomes a problem. The sophisticated tax planner and the community paralegal worker alike does his or her most effective work when he assists clients to organize their affairs to avoid anticipated problems. The author of a pamphlet on "How to Draft Your Own Will" and the sophisticated estate planner fulfill the same basic roles.
- (ii) The Creative Role: The legal system manages to broadcast its image of solidity largely because of its ready capacity to adapt - within, to be sure, the limits of its own narrow social and economic

superstructure. At every level, personnel engaged in this adaptive process constantly create new legal machinery and, even more frequently, new lubricants for the existing machinery. Corporate lawyers seeking structures to minimize their clients' tax liabilities and community paralegal workers seeking more effective techniques of resisting evictions are alike in this role.

- (iii) The Organizing Role: The legal system responds to pressure from more or less organized constituents. Native paralegal workers assisting to organize prison inmates seeking better conditions and developers' lawyers organizing lobbies of landowners seeking the repeal of unfavourable planning by-laws each play this kind of role.
- (iv) The Negotiator's Role: Only a small part of potential conflict surfaces in formal adjudication. Short of adjudication, legally trained persons play an important role in advising persons of the value of their legally protected claims, thus enabling resolution of disputes without formal adjudication. The tax lawyer who settles the Ministry of Revenue's claim against the large corporate taxpayer and the articulated student who recommends that a tenant

settle a dispute with a landlord are alike involved in the process of rendering formal adjudicative mechanisms more effective by predicting their results in advance of incurring the costs of formally resolving disputed claims.

- (v) The Litigation Role: When anticipation, creation and organization fail, open conflict breaks out in an astonishingly varied array of dispute resolution forums - grievance arbitrations in union-management conflicts, planning board hearings to resolve zoning controversies, special hearing boards to arbitrate disputes between insurers as to which of them shall bear a particular loss, small claims courts to hear debtor-creditor matters, sophisticated commercial arbitrations and countless others in addition to the judicial forum.

C. The Policy Responses

The degree of civil justice obtained through the actions of all the actors in such a complex of interrelated roles will be directly related to the integrity and acceptability of the legal rules administered by these actors.² It is these aspects of the

integrity and acceptability of the system which ensure that most of the rules it administers are observed by most people most of the time. The cost of obtaining adherence without voluntary compliance are likely to be unbearably substantial.

Yet this argument, if accepted, cannot by itself be dispositive of the policy dilemma of the degree of regulation essential to the system's preservation. The dangers apparently inherent in a completely unregulated market in legal services cannot by themselves justify the prescription of professional monopoly. This is particularly so when conceptual analysis of the monopoly phenomenon is suggestive of concerns as substantial as those raised by complete absence of regulation.

First, the professional monopoly may well become a monopoly of the relevant technology. Here, as in other contexts, the barriers to competition imposed by licensure may lead to inefficient use of public resources through the failure of the incentives to innovation one associates with perfect competition. Who can doubt that a properly guarded system of incentives to offer legal or any other kind of services in less costly, less time-consuming and more effective ways would be a useful policy initiative.

Secondly, with civil justice as with anything else, it is difficult to justify paying more than is necessary for the product. If regulation by licensure were seen to produce unnecessarily expensive civil justice, then it is arguably an instrument too

blunt for the purpose designated. Were we to discover that access to various sub-markets of the market for legal services was denied to qualified persons who might offer comparable services at lower cost, there would be cause for concern.

Lastly, there seems in the abstract a clear danger that the professional monopoly might extend itself to services which do not justify the impositions of the barriers to access associated with the professional monopoly. We would be concerned that the arguably laudable goal of producing highly qualified professionals, expecting a reasonable return on their investment in their own skills not be used as a pretext for the extraction of monopoly profits from the rendering of services for which the professional is overtrained - for which, in other words, his professional qualifications are simply not required. If it could be shown that a given sub-market of legal services is in fact being serviced by lesser trained persons or could be serviced by such persons, we might wish to re-examine the decision to subsume those services under the professional monopoly.

It seems then that dangers lurk at each extreme of unregulated competition and professional monopoly through licensure. Sound policy development in these areas would presumably seek to explore a full range of policy options to determine the least costly techniques for limiting the individual and social costs of incompetent legal services. We ought to seek to limit the professional monopoly through occupational licensing to those circumstances in which no equally effective but less costly policy response

can be developed.

Footnotes

1. Report of the Task Force on Legal Aid (Toronto: Queen's Printer, 1974).
2. We have paraphrased here the language of George Adams who in evaluating the importance of procedural fairness indicated that

" . . . the degree of civil justice or fairness obtained by a procedural arrangement is an important influence upon the integrity and acceptability of the legal rules administered by that arrangement."

See Adams, Towards a Mobilization of the Adversary Process (1974), 12 Osgoode Hall Law Journal 569 at 573.

III. The Regulation of Lawyers

- A. The Law Society of Upper Canada
- B. The Powers of the Law Society
- C. The Education of Lawyers
- D. The Unauthorized Practice of Law
 - (i) The Purpose of the Prohibition
 - (ii) The Scope of the Prohibition
 - (iii) Law Clerks

Footnotes

III. The Regulation of Lawyers

A. The Law Society of Upper Canada

In 1797, an Act of Parliament¹ established the Law Society of Upper Canada. From that time to this, the Law Society has regulated virtually every aspect of legal practice in this province.

The Law Society is a statutory corporation to which every lawyer in the province must belong.² Its governing body is "Convocation", composed principally of forty 'benchers' elected by the membership (i.e. lawyers) and headed by a 'Treasurer' (president) elected by the benchers. Convocation also includes four lay persons, appointed by the Lieutenant Governor in Council, who have all the rights and privileges of elected members. The Legislature presumably intended that these latter benchers should leaven the professional domination of the regulatory structure. An Advisory Council composed of lawyers is constituted by The Law Society Act to consider the "manner in which members of the Law Society are discharging their obligations to the public and generally matters affecting the legal profession as a whole" (s.26). The extent of its present functioning is uncertain.

B. The Powers of the Law Society

Through a system of special and standing committees reporting to Convocation, the Law Society administers a scheme

of rules and regulations which governs every aspect of its own affairs and of the practice of law in the province of Ontario. The controlling statute confers on the Law Society a rule-making power governing many important areas of regulation. The power to make regulations governing the admission to the practice of law, as well as the conduct and discipline of members is granted subject to the approval of the Lieutenant Governor in Council. The administration of the regulatory framework is in the hands of the Law Society itself.

C. The Education of Lawyers

The Committee's staff, drawing on admirably detailed writing in our own legal history,³ has already outlined the past and present of legal education in Ontario.⁴ From a stormy past to an uncertain present, legal education in Ontario has been set on its course from time to time by the forces of the day. No substantial changes have taken place since 1957 when the present system was put in place.

Candidates for the call to the Bar must meet the following requirements:

- (i) a minimum of two years university training; in fact, a substantial majority of law school applicants have at least a three-year undergraduate degree;

- (ii) the completion of the three-year LL.B. programme at an "approved" university law school (there are presently six of these in Ontario);
- (iii) completion of one year under articles of clerkship to a practising lawyer;
- (iv) completion of a six-month course of instruction offered by the Law Society after the conclusion of articles; because of the scheduling of Parts (iii) and (iv) (together called the Bar Admission Course), they require two full years to complete.

For the typical student, this amounts to a requirement of eight years of post secondary study preparatory to admission to the practice of law. There is, as far as we are aware, no comparably lengthy requirement in any common law jurisdiction in the world. Indeed, the United Kingdom, Australia, New Zealand and many American jurisdictions require considerably shorter programmes of admission to practice.

In 1973, the Law Society considered the recommendations of its own MacKinnon Committee into legal education. The shortening of the total period had been a priority concern for the Committee. Ultimately, after considering reducing the admissions requirements to LL.B. programmes and reducing the LL.B. programmes themselves from three to two years, the Committee settled on rejecting the requirement

of articles of clerkship. The Law Society declined to follow this recommendation.

From 1960/61 to 1975/76, the total population of Ontario Law Schools increased by approximately 300%,⁵ compared to a 25% increase in population over the same period. The costs to the public of legal education have increased correspondingly. Substantial benefits, particularly in the form of greater accessibility of lawyers, have no doubt been realized. Anecdotal evidence from lawyers themselves suggests that this increase in numbers has led to some drop in income. We have no data on this. We do emphasize that the lengthy educational requirement is costly to the individuals concerned who no doubt seek to recoup as much of their investment as possible in the marketplace.

D. The Unauthorized Practice of Law

The legislature has accorded to the membership of the Law Society of Upper Canada the exclusive right to practise law in the Province of Ontario.⁶ No person who is not a member in good standing of the Law Society may (1) act as, (2) hold himself out as, (3) represent himself to be or (4) practise as a barrister or solicitor. Offenders are subject to fine and injunction.⁷ To supplement these prohibitions, The Solicitors Act expressly prohibits the collection of a fee by a non-lawyer who acts for another as a solicitor before the courts.⁸ The same provision vests in the courts the power to cite for contempt any non-lawyer who appears for another before the court in an unauthorized manner.

The Law Society Act nowhere defines exactly what conduct amounts to unauthorized practice. Furthermore, the administration of the prohibition appears to have been left entirely to the Law Society through its Unauthorized Practice Committee.⁹ In the result, the bench and bar together have been accorded a considerable discretion in determining which conduct will be subject to sanction.

i. The Purpose of the Prohibition

In one leading case, the Ontario Court of Appeal described the purpose of the prohibition against unauthorized practice:

It is to protect members of the legal profession who have been admitted, enrolled and duly qualified as solicitors against wrongful unfringement by others of their right to practise their profession. It is also for the protection of the public
... .¹⁰

There is modern authority in lower courts emphasizing the protection of the public from unqualified persons as the purpose of the prohibition.¹¹

ii. The Scope of the Prohibition

The statute specifically exempts from its prohibition conduct otherwise authorized by law. For example, in summary conviction matters under Part XXIV of the Criminal Code, the accused may appear by counsel or by agent.¹² Anyone not prohibited by the judge may represent a litigant in the Small Claims Court.¹³ As well, non-lawyers may represent parties in most proceedings before administrative

tribunals in Ontario.¹⁴

The case law indicates that more than an isolated act is required to be convicted of practising as a lawyer.¹⁵ Proof that an accountant had acted to incorporate one company did not attract the provision in one case;¹⁶ an accountant who made a practice of performing this service for his clients was convicted of an offence.¹⁷

None of this touches the substance of the matter. What kinds of conduct are prohibited? The Courts have held that the prohibition extends to

"every service which imperatively requires the exercise of the skill and learning of a solicitor who has been admitted and enrolled and duly qualified."¹⁸

The drafting of wills,¹⁹ the incorporation of companies by a qualified accountant,²⁰ conveyancing²¹ and the processing of uncontested divorces²² have all been held subject to the prohibition. Moreover, the courts seem determined to protect persons from the possible consequences of their own voluntary decisions to employ non-lawyers, inasmuch as the individual who fully advises his 'client' that he is not a lawyer cannot thereby make out a defence.²³

iii. Law Clerks

The Law Society Act provides for a power in Convocation subject to the approval of the Lieutenant Governor in Council to

make regulations "defining and governing the employment of barristers and solicitors' clerks."²⁴

Footnotes

1. An Act for the Better Regulating the Practice of Law (1797), 17 Geo. III c. 13; for a brief historical treatment see Appendix B to the Research Directorate's Staff Study, "History and Organization of the Legal Profession in Ontario (1978), pp.1ff.; e.g. Armstrong, The Honourable Society of Osgoode Hall (Toronto: Clarke, Irwin & Co., 1952).
2. The Law Society Act , R.S.O. 1970, c. 238, s. 28; the best work on the regulatory framework of the Law Society is Harry Arthurs, Authority, Accountability and Democracy in the Government of the Ontario Legal Profession (1971), 49 Can. Bar Rev. 1.
3. See particularly Bucknall, Baldwin and Laskin, Pedants, Practitioners and Profits: Legal Education at Osgoode Hall to 1957 (1968), 6 Osgoode Hall Law Journal 137.
4. See Appendix B to the Research Directorate's Staff Study, op.cit., Ch. IV.
5. Statistics Canada, Fall Enrolment in Universities, Catalogue No. 81-204, annual.
6. The Law Society Act, R.S.O. 1970, c. 238, s.50.
7. Id.

8. R.S.O. 1970, c. 441, s.1.
9. Appendix B to the Research Directorate's Staff Study, op.cit., Ch.III.
10. R. ex rel. Smith v. Mitchell, [1952] O.R. 896 at 903 (C.A., per Laidlaw, J.A.). This is a view statutorily recognized in British Columbia where the Law Society is charged to make rules
 - 37(a) for . . . the maintenance of [the Society's] standards and honour and for the protection and well-being of those engaged in the practice of law in the Province;Legal Professions Act, R.S.B.C. 1960, c.214.
11. E.g. R. v. Zaza and D.A.S. Holdings Ltd., May 1974, unreported, Boland Co. Ct. J.
12. R.S.C. 1970, c.C-34, s.735(2); federal proceedings invoking Part XXIV of the Criminal Code, as well as provincial matters governed by the Summary Convictions Act R.S.O. 1970, c.450 also specifically provide for representation by non-lawyer agents.
13. R.S.O. 1970, c.439, s.
14. The Statutory Powers Procedures Act, S.O. 1971, c.47, s.10.
15. R. ex rel Smith v. Ott, [1950] O.R. 493 (C.A.); R. ex rel Smith v. Mitchell, [1952] O.R. 896 (C.A.); R. v. Mills, [1964] 1 O.R. (C.A.); R. v. Campbell (1974), 3 O.R. (2d) 402 (Prov. Ct.).

16. Ott, supra note 15.
17. R. v. Ballet, [1967] 1 O.R. 696.
18. Mitchell, supra note 15 at p.
19. R. v. James, [1946] O.W.N. 340.
20. Ballet, supra note 17.
21. Mitchell, supra note 15; R. v. Glass, [1953] O.W.N. 450.
22. R. v. Zaza and D.A.S. Holdings Ltd., unreported, May 3, 1974, Boland, Co. Ct. J.; R. v. Engel and Seaway Divorcing Service (1976), 11 O.R. (2d) 343.
23. R. v. Wood, [1962] 27 (Co.Ct.); Zaza, supra note 22; Engel, supra note 22.
24. R.S.O. 1970, c.238, s.55(6).

IV. Economic Analysis of the Market for Lawyers' Services:
Demand for Lawyers' Services

A. Introduction

B. Demand for Lawyers' Services

1. Survey of Ontario Clients - Household Clients

- (a) The Decision to Consult a Lawyer
- (b) The Search and Selection Process
- (c) Evaluation of Service
- (d) Complaints

2. Survey of Ontario Clients - Business Clients

- (a) Lawyer Selection
- (b) Evaluation of Service
- (c) Fees
- (d) Conclusion

3. Other Client Surveys - Households

- (a) The Decision to Consult a Lawyer
- (b) The Search and Selection Process
- (c) Evaluation of Service

Footnotes

IV. Economic Analysis of the Market for Lawyers' Services

A. Introduction

The following six chapters will examine the market for lawyers' services from an economic perspective with a view to assessing the conduct and performance of the market and the effectiveness of the present regulatory environment as a means of protecting the 'public interest'. The 'public interest' considerations in this context relate to the need for providing quality guarantees to an unknowledgeable clientele unable to evaluate the technical competence or expertise of professionals. It is therefore useful to determine the magnitude of the consumer information problem through a discussion of the data available on Ontario clients. (chapter IV) To the extent that licensure is seen to be an insufficient response to imperfect buyer information, other alternatives will be examined and evaluated. (chapter IX)

Similarly, with respect to an evaluation of market performance, it is first necessary to detail the structure of the market in terms of the characteristics of demanders (chapter IV) and suppliers (chapters V-IX). The identification of buyers and sellers on the basis of size, location, and type is important to a determination of the relevant market segments, which can then be analyzed separately.

To elucidate the distinctions among suppliers, chapter V will describe law firms in Ontario, their geographic distribution, areas of practice and types of clients, while chapter VI will focus on the internal structure of firms, including the occupational composition of law office personnel, work functions and training of different kinds of manpower, employment patterns, and a variety of data on earnings of lawyers and salaries of other personnel.

The next two chapters (chapters VII and VIII) will isolate

particular aspects of market structure for fuller discussion. Specifically in chapter VII specialization by firms and by lawyers within firms will be examined. In the following chapter, concentration, that is, the size distribution of firms, will be explored using a variety of alternative firm characteristics, eg. location or specialty, to define market boundaries.

It will be seen from the evidence presented in these chapters that the specialty(ies) and location of the firm are the important determinants of market segmentation, that is, the factors defining the sub-markets in which firms compete. In other words, the suppliers of lawyers' services are not homogeneous; rather, firms will be seen to be differentiated with respect to certain characteristics which in turn operate as effective boundaries to firm activity. It will also be seen that certain of these sectors are concentrated, meaning that the number of suppliers is small and/or service provision is dominated by a few firms. In chapter IX the concentrated segments will be examined in terms of economic efficiency and consumer welfare within them, and alternative policy proposals will be evaluated in terms of their effects on market structure and performance in these sectors.

B. Demand for Lawyers' Services

This chapter will explore the nature and extent of information available to clients at each of the three stages involved in a legal transaction; the decision to consult a lawyer, the search and selection process, and evaluation of service received. It will be seen that clients tend to be segmented with regard to knowledge about lawyers and access to information about their services. Specifically the unknowledgeable clients tend to be the households or individuals (as opposed to businesses), although there are information problems pervading the entire market. Moreover this demand-side market failure will be seen to flow from the specific characteristics of the household clients and more generally the nature of the 'product'.

The main source of information about Ontario clients is a survey conducted by Connie Nakatsu for the Professional Organizations Committee.¹ In her study, users of legal services were divided into two groups (individuals and businesses) on the assumption that the two classes of users would vary sufficiently with respect to types of legal problems, experience with lawyers, and information, so as to require different questionnaires. Accordingly, these two groups will be analyzed separately herein. In the following section, the results from this study will be compared to and supported by those from surveys conducted in other jurisdictions.

1. Survey of Ontario Clients - Household Clients²

The present rules of conduct governing the conduct of lawyers in Ontario prohibit advertising of specialty, price, years of experience, or other information about attributes of lawyers. In such an institutional environment how is information about lawyers transmitted to users and potential users of legal services and how do consumers in fact select a lawyer?

(a) The Decision to Consult a Lawyer

Prior to commencing the search for a lawyer, an individual must recognize the legal nature of his/her problem. In addition, individuals must feel that lawyers are accessible to them. Information obtained from the client survey indicates general mistrust and misconceptions about lawyers - and this sample only includes those who have used lawyers in the past!

When clients were asked to indicate their feelings towards a series of statements the following results emerged:

1. 64.7% of the sample felt that "a person should not call a lawyer until he has exhausted every other possible way of solving his problem."
2. 66.6% agreed with the statement that "most people cannot afford the money to see a lawyer."
3. 72.4% agreed that "many people do not go to lawyers because they do not recognize the legal nature of the problem."

It may be that a large number of potential demanders are excluded from the market due to a lack of information or misinformation about lawyers and lawyers' fees.³

(b) The Search and Selection Process

There are two potential sources of information about lawyers: previous experience and word of mouth discussion.

Although previous experience with lawyers is no guarantee of an informed and knowledgeable clientele, it can serve several useful functions. These include the development of criteria for choosing lawyers, an ability to evaluate the quality of service received and knowledge of appropriate prices for different legal services. However, the data from the client survey show that individuals are not frequent purchasers of legal services (see Table IV.1); only 26% used lawyers more than twice a year. It would seem then that previous experience would not be very useful as a source of information for this group of clients.^{4,5}

Secondly, knowledge of lawyers who are appropriate for one type of legal matter may not be useful across all areas of law; the qualities desired in a lawyer may depend on the nature of the problem. To the extent that individuals are one-time users for a specific legal problem, this notion of limited transferability mitigates the usefulness of previous experience as a source of information. Indeed, one would not expect the same legal problem to re-occur for individuals. A divorce, the purchase or sale of a house, drawing up a will - all these are matters which for most individuals do not happen often.

One could argue that the same general practitioner would be appropriate for all of the above 'routine' transactions, and many individuals may use the same lawyer for all their legal problems; but, to the extent that special expertise may be required (for example, a contested divorce), clients may prefer to change lawyers.

TABLE IV.1

Distribution of Users of Legal Services by Frequency of Use (frequency & percentage).

<u>Frequency of Use</u>	<u>Frequency</u>	<u>Percentage</u>
More than twice a year	19	26.0
Once or twice a year	14	19.2
Once or twice in five years	34	46.6
Other	5	6.8
No answer	1	1.4
	<hr/>	<hr/>
N =	73	100.0

Source: Client Survey Report, p. 9

The second means of generating information about lawyers is word of mouth discussion. As Table IV.2 indicates, most consumers rely on such informal contacts to find a lawyer; few clients rely on the legal referral services. This may be due either to a lack of information as to its existence or a lack of confidence in the information so obtained. It is worth noting, however, that the value of third party recommendations may be limited - the 'right' lawyer for one individual may not be appropriate for another in terms of expertise, personality or location. Moreover, those providing the information may have had minimal experience with lawyers, further limiting the effectiveness of this source of information generation.

To evaluate alternative lawyers and make an informed selection, one might expect individuals to contact the various lawyers being considered and to consult friends or other third parties for information. However, the client survey results indicate that only 17.8% of clients called more than one lawyer prior to selection.⁶ On the other hand, slightly more than half the sample (50.6%)⁷ reported having more than one lawyer in mind. Of these individuals, 57% asked others for information about the various lawyers involved.⁸ It is not clear from the questions asked how the rest of those who were deciding among different lawyers informed themselves about their alternatives.

The limited telephoning would tend to indicate a lack of independent search and evaluation. In other words, individuals may be relying on third parties not only to recommend names of lawyers and provide information to aid in lawyer selection, but also to do the selecting for them. The costs of engaging in a search for a lawyer

TABLE IV.2

Distribution of Users of Legal Services by Source of Information (frequency & percentage).

N = 72

<u>Sources</u>	<u>Frequency</u>	<u>Percentage</u>
Friends	38	52.8
Family	9	12.5
Business associates	18	25.0
Legal referral service	2	1.1
Legal aid	6	8.3
Other	16	22.2
	<hr/>	<hr/>
	89	

Source: Client Survey Report, p. 14

may be too high for the individual relative to the benefits received. To the extent that individuals are unable to perceive variations in quality among lawyers, the value of collecting information is limited. The potential benefits are also limited by the number of times the information is to be used - individual clients however are infrequent purchasers of lawyers' services.

Moreover, the costs of obtaining information may be high. Individuals who have had infrequent dealings with lawyers are likely to be intimidated, afraid of asking naive questions or worse, not knowing what to ask. Indeed, the tendency to rely on others for evaluation of alternative lawyers would be greater the greater the discrepancy between desired and available information; that is, the higher the search costs. On the client survey, individuals were asked to indicate what information they had prior to selection of a lawyer (see Table IV.3). The results show that the information most available was that concerning the expertise of the lawyer while the least available was information about fees.

When clients were asked what information would have been useful in selecting a lawyer they responded as follows:

TABLE IV.4

Distribution of Sample of Users of Legal Services by Types of Information which would have been used had it been available.
N = 73

<u>Type of Information</u>	<u>Frequency</u>	<u>Percentage</u>
Information about fees	31	42.5
Names of experts	48	65.8
Information as to personal attributes	30	41.1
Other (satisfaction experienced by friends, relatives, or business associates, success rate)	8	11.0
No responses	6	8.2

Source: Client Survey Report, p. 13

TABLE IV.3

Distribution of the users of legal services by type of information which the person knew before selection of a lawyer.

<u>Type of Information</u>	<u>Frequency</u>	<u>Percentage</u>
Lawyer who was expert in related field	28	38.4
Information about fees	13	17.8
Information about personal attributes	23	31.5
Names of lawyers located close to home	15	20.5
Other (satisfaction experienced by friends, relatives, or business associates, success rate)	21	28.8
No response	5	6.8
	<hr/>	<hr/>

N = 73

Source: Client Survey Report, p. 12

In comparing the responses to the two questions, the largest increases in percentages occurred in the categories of fees and expertise, from 17.8% to 42.5% in the former category and from 38.4% to 65.8% in the latter. It would seem then that there are large information gaps for individual clients. This result coupled with the lack of experience with lawyers for this client group (and therefore lack of criteria for evaluating alternative lawyers) would render search costs high and probably prohibitive. It should be recognized, however, that despite the apparent prohibitiveness of search costs, the valuation of benefits from choosing the 'right' lawyer may be close to 'infinite' for the client if there are large irreversible costs associated with 'bad' service (for example, losing a custody battle, conviction instead of acquittal on a murder charge, etc.).

Table IV.5, also derived from the client survey, indicates the importance attached by clients to various lawyer attributes. By far the most important qualities are competence, expertise, honesty, qualifications and reputation. It is interesting that location is not of concern to consumers - one might infer that individuals would be prepared to travel some distance to access a lawyer chosen for other distinguishing characteristics. Also for infrequent purchasers of lawyers' services, travel costs (both time and expense) would not be a significant cost item.

A majority of respondents also indicated that price was an important factor though of lesser degree than the ones previously mentioned. This is confirmed elsewhere in the questionnaire - 58% of the sample felt that fees were not a prime concern in choosing among lawyers.⁹

TABLE IV.5

Distribution of the sample (users and non-users) as to the importance of particular qualities in choice of lawyer. N = 76

	Very Impt.	Impt.	Unimpt.	Quite Unimpt.	Not con- sidered	No Response
Established Reputation	32	21	10	2	4	7
Price	20	38	9	2	1	6
Competence	54	14	1	0	0	7
Location-ease of access	9	17	31	8	5	6
Expertise	42	23	0	0	2	9
Specific lawyer works there	11	20	16	3	14	12
Other people use	3	17	17	8	16	15
Honesty	58	11	0	0	1	6
Qualifications	45	21	2	2	1	5

Source: Client Survey Report, p. 42

On the other hand, 64.3% of the sample did not discuss fees with lawyers prior to engaging one.¹⁰ Although quality considerations are indicated as taking precedence over price in lawyer selection, price can function as the decision variable in choosing between lawyers of similar 'quality'. In fact, 47% of the sample never discussed fees at all with their lawyer; and, of the 45% that did discuss fees, about 10% of these individuals did so after the bill was presented.¹¹ This lack of 'shopping' with respect to fees reported in the client survey lends support to the notion of client intimidation and is further evidence of the general information problem in the market.

(c) Evaluation of Service

The focus of this examination into the interaction between lawyer and client will be to discover the extent to which clients are able to evaluate legal services in terms of quality received and price charged.

Although clients appear to be uninformed in the selection process, most appeared able to evaluate the quality of service received and in fact seemed satisfied with the lawyer chosen (see Tables IV.6 and IV.7). Over 65% felt that the lawyer did everything possible on their behalf, while over 70% felt that the lawyer did a competent job. A small percentage (about 10%) felt that they were unable to evaluate the above questions.

Both in responding to questions about their relationship with their own lawyers and in reacting to statements about lawyers in general, clients seem divided in their views. Table IV.8 indicates client attitudes towards their relationship with their lawyers.

TABLE IV.6

Satisfaction with Lawyer Effort

In your last dealings with your lawyer, do you think that your lawyer:

	<u>Frequency</u>	<u>Percentage</u>
(a) did everything possible on your behalf	48	65.8
(b) could have done more	12	16.4
(c) don't know	11	15.1
(d) no response	2	2.7

TABLE IV.7

Satisfaction with Service

Do you think your lawyer did:

	<u>Frequency</u>	<u>Percentage</u>
(a) a competent job	52	71.2
(b) an incompetent job	10	13.6
(c) don't know	8	10.9
(d) barely adequate	1	1.3
(e) could have done better	1	1.3
(f) no response	1	1.3

N = 73

No response = 1 = 1.3% of the sample.

Source: Client Survey Report, p. 36

TABLE IV.8

Distribution of the users of legal services by the nature of their solicitor - client relationship (frequency & percentage).
N = 73.

<u>Nature of Relationship</u>	<u>Frequency</u>	<u>Percentage</u>
Lawyer was genuinely concerned about problem	38	52.0
Lawyer did not take time to deal with questions	11	15.0
Lawyer carefully explained aspects of case	43	58.9
Lawyer was sympathetic and understanding	33	45.2
Lawyer was rushed and hurried in dealing with questions	8	10.9

No response = 3 = 4.1 of the sample of users of legal services.

Source: Client Survey Report, p. 35

It is clear that small percentages of clients were prepared to criticize the time spent by the lawyer in answering questions. However, the appropriate interpretation of responses to the other statements is less clear. A lawyer need not be sympathetic and understanding to do a good job, while the question of 'genuine concern' is probably irrelevant in a real estate transaction. Thus, the fact that respondents did not check these statements as applicable to their lawyer does not necessarily imply dissatisfaction.

The following table shows client responses to general statements about lawyer/client relationships:

TABLE IV.9

Percentage Distribution of Sample Reacting to Specific Statements.

<u>Statement</u>	<u>Strongly</u> <u>Agree</u>	<u>Slightly</u> <u>Agree</u>	<u>Disagree</u> <u>Slightly</u>	<u>Disagree</u> <u>Strongly</u>	<u>Can't</u> <u>Decide</u>
Lawyers are generally not very good at keeping their clients informed of progress on their case.	26.1	17.4	18.8	31.9	5.8
Lawyers are prompt about getting things done.	21.7	8.7	33.3	30.4	5.8
Lawyers are prompt about informing clients about the progress of their case.	24.6	21.7	23.2	26.1	4.3

Source: Client Survey Report, p. 39

Although a small majority of respondents did not feel lawyers were 'prompt', a small majority also disagreed with the statement that lawyers were 'not very good' about informing clients. Thus it is not altogether clear from these questions how satisfied clients really were.

A more reliable indicator of satisfaction would be the extent to which clients were satisfied sufficiently to consult the same lawyer again (see Table IV.10). Indeed, 57.5% of the sample were prepared to consult the same lawyer regardless of the nature of the legal problem involved. Another 22% would do so if a similar problem occurred. Only 19.2% of respondents indicated they would definitely consult a different lawyer.

One client noted that she would only return to her lawyer if she had enough money to command the competence she felt he possessed.

TABLE IV.10

Distribution of Users of Legal Services with regard to satisfaction with Lawyer.

	<u>Frequency</u>	<u>Percentage</u>
(a) I would consult the same lawyer again regardless of the type of problem	42	57.5
(b) I would consult the same lawyer again only if I had a similar type of problem	16	21.9
(c) I would never use the same lawyer	14	19.2
(d) No response	1	1.4

	73	

Source: Client Survey Report, p. 36

It is interesting that a client would be sensitive to the possibility of differential effort exerted by the lawyer depending on the type of client he was serving. If in fact individual clients are unsophisticated one-shot users of lawyers' services unable to perceive and evaluate quality variations, then the lawyer who wants to take advantage of the situation by minimizing his effort can do so. Moreover, if the client fits the above description, the lawyer risks little: for these clients there is little potential for repeat business, and they are unlikely to be effectual in pursuing complaints, so that even if the client feels shortchanged, neither the lawyer's income (lost business) nor his reputation is likely to be affected.

On the whole, however, clients reported satisfaction with the quality of service received. There are several conclusions one might draw. One is that the informal information networks are functioning well with respect to lawyer selection and that recommendations of friends, relatives, etc. are in fact a reliable means of collecting information about lawyers. A second possibility is one mentioned previously - that any general practitioner is competent to handle the type of legal matters generally encountered by the client group under consideration. Finally, it may be that clients are satisfied because they do not know enough not to be satisfied. The argument here is the same as that for the 'differential effort' notion discussed above. In other words, to the extent that clients are unaware of what lawyers do and how they do it, they would be unable to evaluate whether or not it had been done properly.

In the case of fees, clients report satisfaction for the most part. Most clients (63%) felt that they had received good value for

their money, while 70% had no complaints about fees.¹² These results seem surprising given that a large proportion of respondents stated that the fees charged were higher than expected (see Table IV.11) and, in responding to statements about lawyers' fees, most individuals felt that they were too high (see Table IV.12). Moreover, when asked to specify how fees were determined, most clients did not know (see Table IV.13).

Despite the findings that most clients did not complain about fees and even felt that their money had been well spent, it is not clear that this satisfaction is all that meaningful. The general belief that all lawyers charge high fees, coupled with a lack of information about fee levels, may stop individuals from searching for a cheaper lawyer or indeed from feeling that they have been overcharged. In addition, if they do not know how fees are determined, clients have little way of judging the appropriateness of prices charged. Thus, it may be that this widespread satisfaction with respect to fees really represents a lack of knowledge on the part of clients.

(d) Complaints

In examining the incidence and nature of complaints about lawyers' services and fees, the emphasis, in light of the previous analysis, will be to determine the extent to which complaints are evidence of a further information problem or in fact reflect a competence problem. Insofar as the former is concerned, an attempt will be made to examine possible solutions. Resolution of the latter is more appropriately dealt with in the study of continuing competence of professionals.

TABLE IV.11

Client Feelings About Fees Charged.

<u>Fees charged were:</u>	<u>Percentage</u>
(a) higher than expected	37.1
(b) lower than expected	7.7
(c) as expected	53.2

Source: Client Survey Report, p. 20

TABLE IV.12

Attitudes of Clients.

<u>Statement</u>	<u>Strongly Agree</u>	<u>Slightly Agree</u>	<u>Disagree Slightly</u>	<u>Disagree Strongly</u>	<u>Can't Decide</u>
Lawyers fees are usually fair to their clients	16.4	20.9	25.4	19.4	17.9
Lawyers fees are usually cheap	0	4.7	12.7	68.8	12.5
Lawyers fees are usually too high	27.3	25.8	12.1	19.7	15.2

Source: Client Survey Report, p. 39

TABLE IV.13

Clients' Responses to Method of Fee Setting.

<u>Method of Setting Fees</u>	<u>Percentage</u>
(a) Set fee of percentage	24.6
(b) Hourly Rate	1.4
(c) Don't know	61.7
(d) Other	6.8
(e) No response	5.5

Source: Client Survey Report, p. 20

As indicated in the previous section, most clients did not have complaints either about the quality of work or about fees. However, of the 27.4% who were not satisfied with the service received, 42.1% also complained about fees.¹³ The nature of complaints in the quality area is seen in Table IV.14.

Of the complaints listed, most related to slowness of the lawyer in dealing with the case; this complaint was especially prominent in divorce cases. Furthermore, the nature of some complaints in divorce actions related to the passing on of confidential information by the lawyer. This is to be contrasted with litigation matters where the most common complaint was incorrect advice.¹⁴

Although individuals complained to a variety of sources, most (67%) noted that the problem stayed unresolved.¹⁵ Indeed a large number of these individuals were unaware of possible courses of action they could take.

In polling the users of lawyers' services about possible courses of action if a complaint arose, it is significant that over one-third did not know or did not answer the question (see Table IV.15). Thus it seems that, although complaints are not numerous, complaint procedures are neither effective nor well-known.

It was seen in an earlier section that clients wanted to be informed primarily about the competence and area(s) of expertise of lawyers before making a selection. To the extent that complaints focus on lack of expertise of the lawyer involved, some method of generating information about specialty and experience (assumed related to competence for the meantime) would lessen this source of problem by matching the nature of legal problem with expertise of the lawyer.¹⁶

TABLE IV.14

Distribution of those who complained about the quality of service received by the nature of the complaint (Frequency and Percentage). N = 19

<u>Nature of Complaint</u>	<u>Frequency</u>	<u>Percentage</u>
Lawyer did not communicate as to progress of case	10	52.6
Lawyer was slow in dealing with the case	12	63.2
Lawyer did not communicate in understandable language	2	10.5
Lawyer did not consult with client in making decisions	6	31.6
Lawyer's advice was incorrect	7	36.8
Other	9	47.4

Source: Client Survey Report, p. 27

TABLE IV.15

Distribution of the Sample who used Legal Services by the courses of action which could be taken if there were a complaint about the quality of services rendered (frequency & percentage). N = 73

<u>Possible courses of action</u>	<u>Frequency</u>	<u>Percentage</u>
Law Society of Upper Canada	21	28.8
See another lawyer	11	15.1
Court	1	1.3
Talk with lawyer/senior partner	15	20.5
Attorney-General's Office/Crown	4	5.4
Don't know	15	20.5
Change lawyers	2	2.7
Legal Aid	2	2.7
Newspaper complaints column	3	4.1
Can't do anything	6	8.2
Better Business Bureau	1	1.4
No response	12	16.4

Source: Client Survey Report, p. 34

If the lawyer was in fact already practising in the area, complaints about incorrect advice are a matter to be resolved by the study of continuing competence of professionals.

Complaints about delays or slowness of the lawyer in dealing with the case may again indicate a lack of information on the part of clients. To the extent that an individual is unaware of the various stages involved in completing a legal transaction and the time involved at each stage, criticism of the lawyer for being slow indicates nothing more than the client's lack of knowledge of legal processes. To alleviate these misunderstandings, the lawyer can be encouraged to explain to his client the details of the case and the necessary procedures, including time estimates.

On the other hand, complaints about slowness due to the lawyer having too many cases, etc., and complaints about the lawyer not communicating with the client often enough are much more difficult to address. If the lawyer is engaging in sloppy, as opposed to negligent practice, present disciplinary action would not address these problems; hence the frustration reported by these complainants, lack of knowledge about possible courses of action, and lack of resolution of complaints. This is a matter which is being considered by the study on continuing competence of professionals and will not be discussed further in this report.

There is also the possibility, however, that the lawyer is doing everything possible on the client's behalf and it is the client whose expectations are unrealistic. For example, complainants in divorce cases may need constant reassurance and support, yet the lawyer fails to provide it - is this a valid grounds for complaint? It may

be that a lawyer of a different temperament would be better suited to this particular client but it may also be the case that the client would not be satisfied no matter which lawyer handled the case. That is not to say the complaint is frivolous, merely that the client needs the help of someone in addition to the lawyer.

This issue points out the limits of information generation as a means of ensuring satisfactory lawyer/client relationships. Specialty advertising in whatever form does not include information about the lawyer's personality. Moreover, continuing with the divorce example, the counselling required by the client may not only be outside the scope of legal advice but may also place the lawyer in a conflict of interest situation, that is, recommending reconciliation instead of divorce. Thus, even if a lawyer could be found whose personality was sufficiently 'sympathetic', the two counselling roles should not be vested in the same person. Rather, information services may be needed which channel individuals to persons appropriate for dealing with the various aspects (legal, emotional, etc.) of a given problem.

In the area of fees, 20% of the sample had complaints.¹⁷ The reasons for dissatisfaction included fees too high relative to quality of service received (client expected more), and dissatisfaction with the outcome of the case. It is interesting that one of those with a complaint in the former area added that he would have preferred to have known the fees before engaging the lawyer: this would have eliminated surprise at the level of fees and presumably complaints about them.

As was the case with complaints about quality of service, a minority of complainants (20%) were satisfied with the resolution of their problem.¹⁸ In these instances, fees were reduced. One respondent mentioned that his lawyer only reduced the fees to prevent him from changing lawyers. For most clients, however, nothing was done. In addition to a lack of leverage for these individuals, that is, little or no business to take elsewhere, it is apparent that they were not aware of effective complaint procedures. Only two complainants knew of the possibility of having the bill taxed.¹⁹ Looking at all users of lawyers' services polled, only 10% were aware of this option, and almost one-quarter of respondents did not know what action could be taken.²⁰

The lack of satisfaction with the disposition of complaints about fees is better understood in the context of client 'ignorance'. How can a client make an informed judgement about the appropriateness of fees charged with little or no information about prices, limited ability to perceive quality variations, no knowledge of legal processes, and no awareness of how the bill was put together? In this context, the feeling that a lawyer's fee is too high is not very meaningful.

Clients indicated a desire to have more information about prices. In a market with reasonably competitive prices,²¹ even if information about fees were available, clients may still feel the price for a particular service is too high, if they have neither an understanding of what is involved in executing a particular legal transaction nor an appreciation of quality of service received. On the other hand, if prices are not competitive, the introduction of price advertising may reduce the ability to overcharge. Leaving

aside the question of how information about 'quality' and 'price' ought to be transmitted, it is only with accurate information about both that clients can make an informed choice from among various price-quality combinations.

2. Survey of Ontario Clients - Business Clients²²

Business clients were randomly chosen from a sample of firms stratified by gross revenues. For the most part, respondents were well informed with respect to all aspects of legal transactions, from lawyer selection to evaluation of service and fee determination. As will be seen, the exceptions are primarily small businesses who appear on the information dimension more like the individual clients than like big businesses. Size of client will be seen to be the primary determinant of knowledgeability.

(a) Lawyer Selection

From the outset it is apparent that business clients are much more knowledgeable than the individuals sampled. There is no issue of 'problem recognition' due to lack of experience with lawyers. Four per cent of respondents in this sample have their own legal department while the rest hire outside legal counsel, 4% having lawyers on retainer with the remainder using lawyers more than twice a year. In fact, 65% of the business respondents regularly deal with more than one law firm due to the different types of legal matters involved.²³

In addition to contacting colleagues and friends for names

and evaluations of alternative lawyers or law firms (see Table IV.16), 73% of respondents contacted the various firms before selecting one.²⁴ This is in marked contrast to the virtual reliance on third parties in lawyer selection for individual clients and the lack of independent search behaviour. It would seem then, that although sources of information are the same for both client groups, the selection process is quite different for each.

Business clients differ somewhat from individual clients in their ranking of qualities sought in a lawyer. Table IV.17 indicates what information was requested by business clients from the firms contacted, while Table IV.18 indicates the relative importance attached to various attributes of the lawyers or law firms. Although the lists of attributes in the two questionnaires are not identical, there is enough overlap to make some comparisons between the individual and business clients.

Established reputation is by far the most important criterion in lawyer selection for business clients. As with individual clients, fees are less important than reputation, but for business clients references from others, location and the fact that a specific lawyer works there become important. Whereas the individual clients overwhelmingly focused on competence-related attributes, business clients acknowledged a range of secondary criteria independent of reputation or specialty. It may be that businesses have as alternatives several lawyers or law firms with known expertise, and in selecting among them, location or price, for example, may become the decision variable. Individual clients, on the other hand, seem to have difficulty determining who is competent to deal with their particular

TABLE IV.16

Sources of Information About Lawyers.

	<u>Percentage</u>
(a) Colleagues (business associates)	33.3
(b) Other legal firms	20.0
(c) Own legal department	4.4
(d) Friends	46.7
(e) Legal Referral Service	0
(f) Other (please specify)	0

Source: Client Survey Report, p. 46

TABLE IV.17

Information Requested From Firms Contacted.

	<u>Percentage</u>
(a) Fees (prices) charged	54.5
(b) Specialization	63.6
(c) Location	27.3
(d) Availability	63.6
(e) Other (please specify)	0

Source: Client Survey Report, p. 46

TABLE IV.18

Percentage Distribution of the Sample in Response to the Question as to the Importance of Various Qualities in Choice of Lawyer.

	Very Important	Important	Unimp.	Quite Unimp.	Not Considered	No Answer
Established Reputation	51.7	41.4	6.9	0	0	3.4
Fees charged	20.7	48.3	10.3	3.4	0	3.4
Size of firm	0	13.8	55.2	6.9	20.7	0
Range of Services	13.8	34.5	10.3	6.9	13.8	6.9
Location	6.9	48.3	34.4	0	6.9	6.9
Specific Lawyer Works There	17.2	44.8	20.7	6.9	24.1	6.9
Other clients Use the Firm	6.9	20.7	24.1	6.9	20.7	10.3
Communicates Well With In House	0	6.9	0	0	0	0
References from Others	6.9	58.6	10.3	0	20.7	6.9

Source: Client Survey Report, p. 48

legal problem, hence the pre-occupation with establishing the expertise of lawyers. Another interesting result is the importance attached by business clients to references from others. It appears then that business clients are much better informed than individual clients due to their own range of experience with lawyers and their ability to draw on the experiences of friends and colleagues who likewise have had numerous dealings with lawyers.

For business clients, lawyer selection does not appear to be a problem. Businesses, especially larger ones, have both the information (names of lawyers and criteria for evaluation of alternatives) and resources (time and money required to search) necessary to engage in effective lawyer selection. In addition the benefits to be gained from search for this client group are considerable due to the high frequency of use of lawyers' services and the costliness of switching lawyers for any business.

(b) Evaluation of Service

A majority of business clients indicated satisfaction with the lawyer or law firm chosen; indeed, only 27%²⁵ had changed lawyers in the past five years and of that group, over 70% had switched due to either a change in the nature of the business or a change in the nature of legal matters (see Table IV.19).

To probe the lawyer/client relationship more directly, the following questions were asked. Ninety-three per cent of respondents felt that the lawyer spent enough time on their case, 86% thought that the lawyer communicated the progress of the case promptly and nearly 80% indicated that the lawyer communicated in language which

TABLE IV.19

Reasons for Changing Lawyers or Law Firm.

	<u>Percentage</u>
(a) Nature of your business changed	20.0
(b) Nature of problem changed	49.0
(c) Dissatisfaction with prices charged	10.0
(d) Dissatisfaction with services	20.0
(e) Lawyer moved or died	< 1.0
(f) Business moved	<1.0
(g) Other (please specify)	0

Source: Client Survey Report, p. 54

was easily understood (that is, no legal jargon).²⁶ Of those who criticized the speed or manner of communication, all were clients involved in small businesses.²⁷

The high incidence of satisfaction among business clients (especially larger ones) can be attributed in part to the effectiveness of the search engaged in by this client group. The evidence of greater satisfaction with lawyers' services on the part of larger businesses also lends support to the notion that size of client may be a factor determining lawyer effort and behaviour. The threat of a company changing lawyers if dissatisfied is much more effective the larger the business involved - both in terms of lost business to the law firm and the potential for damage to its reputation. Indeed, unlike individual clients who for the most part did not know what to do if they had a complaint about quality of service received, 65% of business respondents indicated they would speak to their lawyer and then change firms.²⁸ Moreover, there was a general feeling that this procedure would satisfactorily eliminate the complaint.²⁹ For individual clients, however, this option would not operate successfully since the legal transaction involved is generally an isolated one.

Thus, there does not appear to be an information problem for the business clients in terms of evaluation of quality of service received or resolution of problems relating to quality of service. However, switching lawyers cannot make amends for any adverse consequences arising out of 'poor' quality of service. In other words, there may be a competence problem that is being avoided through businesses changing lawyers, rather than pursuing complaints. There is insufficient detail about the nature of complaints to determine

whether or not they would fall within the scope of present disciplinary measures of the Law Society. Yet for whichever reason complaints are unresolved, there remains a problem which must be addressed by the study of continuing competence.

(c) Fees³⁰

As was the case with individual clients, the businesses sampled were for the most part satisfied with the fees charged; 86% felt that they had received good value for their money. Moreover, 76% of respondents indicated that fees were either lower than, or as, expected. The majority of respondents who thought that fees charged were higher than expected belong to the small business sector. With business respondents the reported results seem fairly credible given their knowledge of appropriate levels of fees. Seventy-five per cent of respondents knew how the fees to be charged were determined. Of those who did not know, it is worth mentioning that nearly three-quarters of those were small business respondents. In addition, respondents indicated that they relied on previous experience to determine the appropriate level, and therefore fairness of fees charged. In fact one large business respondent explained that their company knew how long a particular task should take, the hourly rate usually charged, and therefore the approximate fee.

The following table indicates at which stage business clients discussed fees with their lawyers:

TABLE IV.20

Stage at which Clients Discussed Fees with Lawyers.

	<u>Percentage</u>
(a) in preliminary talks with a number of firms	16.3
(b) after a firm has been selected but before the actual work has been undertaken	34.0
(c) after being billed	31.0
(d) never	24.0 - of these, 71.4% are small business

For those who responded to (a) or (b), some indicated that they negotiated the fee, using knowledge of what other firms charged as a basis for negotiation.

Of those who answered (c) or (d), 40% had an idea what fees would be and did not negotiate for this reason. The majority (71.4%) of those who never discussed fees with their lawyer came from the small business sample. The lack of discussion of fees between business clients and their lawyers would seem to indicate a priori knowledge of the level of fees. The exception seems to be small business clients who lack the knowledge of how fees are determined and who for the most part do not discuss fees with their lawyers. Again, this group of business clients displays characteristics more like those of the individual clients than of their large business counterparts.

Clients were asked to indicate if they had ever been overcharged. One-quarter of business clients felt that they had been overcharged in some transaction with a lawyer. All but one raised the matter with their lawyers and of these half were satisfied with the

resolution of the problem. The incidence of complaints about fees among business clients is as high as that for individual clients, a surprising result given the knowledgeability and experience of the former group. However, the percentages quoted do not take account of the different number of legal transactions involved for each group; they are merely the percentages of respondents reporting complaints. A more accurate picture would be presented if the relevant totals, from which the percentages were calculated for each group of clients, were derived by weighting each respondent by his frequency of use of lawyers' services. In that case, the percentage of business clients who had complaints about fees would drop significantly.

In addition, 76% of clients felt that bills from their lawyers were insufficiently detailed. It is difficult to predict what effect more detailed information would have on satisfaction with fees charged.

When business clients were asked what action could be taken if they had a complaint about fees, half indicated that they would review the matter with their lawyer, 20% would change lawyers and 10% would contact the Law Society, while the rest did not answer the question. One respondent indicated that having the bill taxed was not effective, that the only solution was to switch lawyers.

Changing lawyers is one possible means of preventing future overcharging (at least by the same lawyer) but, as indicated previously, this possibility is probably not effective for individual clients. Moreover, it ignores the question of redress for the original bill concerned. To the extent that reviewing the matter with one's lawyer results in a satisfactory outcome, it is an adequate option

but as seen with individual clients, this is generally not an effective strategy (when not accompanied by some leverage). Thus it would seem that established complaint procedures are not at present an effective means of dealing with overcharging.

(d) Conclusion

It is interesting that in spite of the general satisfaction reported by business clients, and their ability to generate information about lawyers and legal transactions, a majority (65.5%) were in favour of having more information made available.³¹ These clients wanted information about fees (74%), qualifications (53%) and area of specialization (68%),³² the same information desired by clients in the sample of individuals. Instead of each individual or business attempting to collect this information independently, with the resultant disparity in levels and quality of information (discussed previously), it would seem much more efficient and equitable for the information to be generated on a market-wide basis.

3. Other Client Surveys - Households

Although the sample of Ontario clients was small, the results are consistent with those obtained in surveys in other jurisdictions: specifically, a Canada-wide client survey conducted by The Canadian Gallup Poll for the Canadian Bar Association in March 1978; The Legal Needs of the Public, by Barbara Curran (1977), the final report of a national survey undertaken

by the American Bar Association Special Committee to survey Legal Needs and The American Bar Foundation; Law, Lawyers and the Community by Roman Tomasic, August 1976, some observations from a survey of community attitudes and experiences, conducted by The Law Foundation of New South Wales; and The Image of Solicitors among the General Public, a research study conducted for the U.K. Law Society by Market and Opinion Research International, in September 1977.

In this section, the results from these surveys will be discussed as corroboration of the findings reported previously. It should be noted that these additional data reveal remarkably similar and consistent consumer attitudes and perceptions about lawyers, including areas of deficient information. Given the uniformity of the results, general tendencies emerging from the data will be reported.

(a) The Decision to Consult a Lawyer

It seems that the barriers to utilization of lawyers, that is the lack of information and misinformation noted previously, are operating in other jurisdictions as well.

For example, a large number of respondents in all the surveys agreed that "a person should not call upon a lawyer until he has exhausted every other possible way of solving his problem". Also, the less experienced the client, the greater was the tendency to believe that one should consult a lawyer, only if a major problem occurred. Similarly, inexperienced consumers were less likely to appreciate the potential for lawyers to arrange matters so as to avoid future problems, and more likely to believe that lawyers do not try to

understand their clients' wants and that they needlessly complicate matters.

This lack of information about lawyers and their services is likely to be inhibiting consumers from consulting lawyers about matters with a legal orientation. Indeed, the American and British survey results indicated extensive use of non-lawyer resources in problem resolution. In all jurisdictions clients indicated that they consulted lawyers most frequently for real estate transactions, drawing up wills, settling estates, marital matters, and to a lesser extent, for torts. On the other hand, respondents rarely consulted a lawyer for consumer problems, matters involving government agencies or employment problems.

Thus, not only do consumers hesitate to consult lawyers because they do not recognize their value as resources but also because they do not appreciate the legal nature of many of their problems. As noted previously, over 70% of respondents in the Ontario survey agreed that "many people do not go to lawyers because they do not recognize the legal nature of their problem".

Other aspects of the deterrent effect of information deficiencies include consumer inability to choose a lawyer and over-estimation of lawyers' fees, both with respect to prices for specific transactions and the cost of legal services in general. High percentages of respondents in the American, New South Wales and Ontario client surveys (83% ABF survey; 68% NSW survey; 62% Ontario survey) agreed that "a lot of people do not go to lawyers because they have no way of knowing which lawyer is competent to handle their particular problem".

In addition, there was a general feeling that "most lawyers charge more for their services than they are worth" (68% ABF survey; 51% NSW survey). Also, an overwhelming majority of respondents in all jurisdictions agreed with the statement that, "there are many things that lawyers handle - for example, tax matters or estate planning - that can be done as well and less expensively by non-lawyers -- like tax accountants, trust officers of banks and insurance agents".

Moreover, the responses to these attitude statements tended to vary with the extent of prior experience with lawyers, non-users tending to hold views which would inhibit seeking a lawyer. For example, non-users were more likely than other classes of users to question the fairness of lawyers' fees and to doubt the benefits to be gained from using a lawyer's services relative to the cost involved.

It would seem then that the lack of problem recognition (in terms of the appropriate role of a lawyer and opportunities for utilizing lawyers' services) coupled with the information deficiencies relating to lawyer selection, fees, and the value of lawyers as resources are indicative of an access problem for a large number of clients and potential clients in the household sector.

(b) The Search and Selection Process

The two sources of information about lawyers commonly used are previous experience and third party recommendation. The latter source emerged as predominant for Ontario clients and, not surprisingly, is the primary one used by clients in other jurisdictions. Indeed, recommendations of friends, relatives or colleagues were the most frequently cited means of obtaining a lawyer. Between 55% and

75% of respondents in each survey indicated that their choice of lawyer reflected such a recommendation. At the same time, the data confirm that previous experience with lawyers is sufficiently rare to preclude its usefulness as a source of information. About one-third of clients in each jurisdiction had never consulted a lawyer.

With regard to frequency of use, the American survey results which contain the most detailed breakdown of lawyer utilization over time indicate that individuals are not frequent purchasers of legal services; 35% of all respondents had consulted a lawyer more than once, while only 19% of the sample had done so more than twice. Moreover, the second case occurred on average seven years after the first, a time lag sufficient to limit the usefulness of information previously acquired.

Finally, it should be noted that many of the respondents who had consulted a lawyer more than once, indicated that they consulted a different lawyer for different legal problems. As such, the information accumulated through experience would be of limited value in terms of providing names of lawyers with relevant expertise. It would seem then that third party recommendation is the only effective and available means of lawyer selection for the majority of consumers. In other words, consumers are lacking both alternative sources of information about lawyers with which to make an independent selection and the ability that would be acquired through experience to choose a lawyer with appropriate qualifications.

In terms of qualities desired in a lawyer, the various client surveys indicate consumer interest in the competence, skill and expertise of the lawyer selected and concern that the lawyer be

willing to answer questions and explain matters fully. With regard to lawyers' fees, the evidence from the Ontario and American client surveys demonstrates that fees are a minor decision factor in lawyer selection.

The implication is not that information about fees is unnecessary. Rather, expectations about the level of fees play an important role in the decision as to whether or not to consult a lawyer. As noted previously, non-users are inhibited from consulting lawyers owing in part, to over-estimation of lawyers' fees.

Moreover, if consumers were aware of variations in lawyers' fees, they might be willing to take cost into consideration in deciding among alternative lawyers of similar quality. In fact, a majority of clients indicated that they never discussed fees with their lawyer, and of those that did, a significant percentage brought up the matter after the bill was presented. This data indicate not only a lack of information on the part of clients, but also intimidation about asking lawyers what they charge. For these reasons, improved access to information about fees is necessary for all classes of users.

(c) Evaluation of Service

The majority of respondents in the studies under consideration appeared satisfied with the service received; between 70% and 80% of clients in each survey gave their lawyers a high rating. Moreover, for the 35% of users of legal services in the American sample and the 26% of those in the Canadian sample who had changed lawyers, the two most frequently cited reasons for doing so were unavailability

of previous lawyer due to death, retirement, a move, etc. (27% ABF survey; 58% Canadian survey) and a legal matter not handled by the previous lawyer (15%). Dissatisfaction with quality of service or fees accounted for only 10% and 3% respectively of the reasons for change.

To examine the lawyer/client relationship in more detail, clients were asked to rate their lawyers on a variety of characteristics with respect to their last legal transaction. The results from the surveys are remarkably similar; although the percentage responses differ somewhat, the ranking of lawyer characteristics is virtually identical.

Consumers rated their lawyers highest on honesty and ethical standards, and lowest on keeping clients informed of progress on their cases. After honesty, clients gave their lawyers high ratings on paying attention to what they had to say, and explaining matters fully. The lowest ratings (aside from keeping clients informed of progress) related to lawyer interest and concern about the client's problems, promptness and charging fair and reasonable fees.

The American Bar Foundation survey reported consumer perceptions of lawyers' behaviour and attitudes toward clients separately for each class of users. With regard to more experienced consumers, the responses to attitude statements reveal dissatisfaction with lawyers' working habits, specifically lack of promptness and failure to report. Concerns were also expressed by these users about lawyer competence, in that almost half of this group agreed that lawyers will take on cases even when they are not confident they know enough about the area of law involved to handle the case well. These

clients do not doubt lawyer-client confidentiality, the honesty of lawyers, or the value of lawyers as problem-solvers or more generally as helpful resources. Similarly, the complaints expressed by clients in other jurisdictions focused on slowness and failure to explain and report.

To the extent that working habits are not satisfactory to clients, it would seem that increased lawyer effort is required. Of course, more frequent contact between lawyer and client has cost implications; however, the client may prefer to incur extra charges for more interaction if made aware of his options. At any rate, the client should be making the choice on an informed basis.

Concerns about the expertise of lawyers may reflect a mismatch of lawyer skills relative to the type of problem and not a general lack of competence. Although there may be a competence problem embedded in the evidence of dissatisfaction with work habits and expertise of lawyers, it is unlikely that a majority of practitioners are incompetent. Rather, there is a need to increase information flows, to improve communication between lawyers and their clients, and facilitate appropriate lawyer selection.

As mentioned previously, the rating by clients of the fairness and reasonableness of lawyers' fees was among the lowest of all lawyer characteristics so rated. The reaction to fees charged varied with the type of legal problem, the most favourable reaction occurring for clients involved in real estate transactions, drawing up of wills and settling of estates and the least favourable in divorces. At the same time, the vast majority of respondents indicated that they believed the fee was about the same as that charged by other lawyers

and that the level of fees was about as expected. In other words, the feeling that lawyers' fees are too high, is more likely a reaction to the general level of prices today than a general belief that lawyers overcharge.

Footnotes

1. Connie Nakatsu, Client Survey-Law, Report, prepared for the Professional Organizations Committee (1978).
2. For individuals the questionnaires were sent to 300 individuals who were randomly selected from the records of the County and Supreme Court records. For a rural sample, the County Court files of Wellington were used. Thirty-seven persons had moved. The sample size was thus reduced to 263. Seventy-three questionnaires were returned, thus the response rate was 28%.
3. The question of access will be discussed more thoroughly in later chapters.
4. Business clients on the other hand, infra p.52 to p.62, have more frequent dealings with lawyers, and this experience is one factor accounting for their superior knowledgeability of lawyers and lawyers' services.
5. This evidence of large numbers of 'one-shot' users of lawyers' services lends support to the previous argument that many individuals may not recognize the legal nature of different types of problems.
6. Client Survey-Law, Report, op.cit., p. 10.
7. Ibid.
8. Ibid.
9. Ibid., p. 17.
10. Ibid., p. 16.
11. Ibid., p. 19.
12. Ibid., p. 20.
13. Ibid., p. 26
14. Ibid., p. 27.
15. Ibid., p. 32.
16. This issue will be treated extensively in chapters VII and IX.4.
17. Client Survey-Law, Report, op.cit., p.21.
18. Ibid., p. 22.
19. Ibid., p. 26.

20. Ibid., p. 25.
21. Price advertising will be discussed more fully in chapter IX.4, while the question of access will be dealt with in chapters IX.4 and X.
22. Of the forty-five surveys sent out, thirty were returned, for a response rate of 64%.
23. Client Survey-Law, Report, op.cit., p.45.
24. Ibid., p. 46.
25. Ibid., p. 54.
26. Ibid., p. 53.
27. Ibid.
28. Ibid., p. 52.
29. Ibid.
30. Ibid., pp. 49-51.
31. Ibid., p. 53.
32. Ibid., p. 54.

V. Economic Analysis of the Market for Lawyers' Services:
Supply of Lawyers' Services

Footnotes

V. Supply of Lawyers' Services

Although law firms constitute the major supplier of legal services, there are a number of different types of suppliers and of purchasers in the legal services market. Governments provide legal services to the public and to other levels of government through their departments and agencies. A major recent innovation in some provincial governments, for example, is the ombudsman's office for offering legal services to the public. Because there are so few data (and none which are consistent across these categories) on the provision of legal services by these groups, and because law firms account for such a large share of the total output, the balance of this chapter deals only with law firms.

The data on Ontario law firms are drawn from two sources: the 1971 census of merchandising and services and the 1977 survey of Ontario law firms conducted by the Ontario Professional Organizations Committee. Although the 1971 data are out-dated by about six years, these data remain important because the census obtained information on gross professional fees revenues, and because the basic patterns in market structure are unlikely to have changed substantially. The 1971 census included for the first time the industrial category, "Offices of Lawyers and Notaries".¹ These were defined as:

"Establishments primarily engaged in the provision of legal services; advocates, barristers and solicitors in private practice; notaries public and patent attorneys."²

Data in this census were collected both for locations and for establishments, but only the former are used in this paper. Locations are "the place in which the business activity is conducted", and are considered by respondents to be indivisible entities.

Establishments may include more than one location. The distinction is barely significant for law firms because there were 5,623 locations and 5,458 establishments in Canada in 1971. Thus, there were a maximum of 165 firms with more than one location.

The organization of the legal services industry (or the supply side of the market) should be analyzed in terms of the geographic distribution of firms, their relative sizes, the segmentation of the market by specialization in the fields of law practised; and the extent to which the larger firms appear to be able to dominate the market. One would also like to discover whether there are economies of scale, and over what range in firm size this effect is strongest. Unfortunately, the published data from the 1971 census restricts one to rather general statements about distribution and size.

The 1977 Ontario survey provides somewhat more detailed data especially in terms of geographical distribution, and the composition of services and clients. A major deficiency in this survey, however, is the absence of data on firms' revenues. The survey included every law firm in Ontario, and had an overall response rate of approximately 50%. On individual questions, however, the response rate is somewhat lower, as will be noted in the separate tabulations which follow.

A profile of Ontario law firms, as they existed in 1971, is presented in Table V.1. This shows that there were 2,302 firms with 3,960 partners or solo practitioners, representing an average of 1.7 partners per firm. The "net revenue" - which is actually gross revenue from professional fees - for all firms was \$257 million, or \$112,000 per firm, or \$65,000 per partner. Since overhead expenses (including costs of salaried lawyers) were about 47% of gross revenues³

in Ontario, the net fees per partner were \$30,500. There were about 15,200 persons working in law firms (3,960 partners plus 11,260 employees) for an average of 6.6 persons per firm. Wages and salaries amounted to \$8,835 per employee.

The difficulty encountered in obtaining consistent data on law firms and lawyers is illustrated by comparing Tables V.1 and V.2. The latter table shows the number of lawyers, law society members, and law firms. Although the census reported 2,302 law firms in 1971, the Canadian Law List reported 2,418. This discrepancy is explained in part by the inclusion of government law offices in the latter figure, but the low number of firms shown in the List for 1971 is in itself to be doubted. Notwithstanding the minor inaccuracies that are known to be associated with the List data, the general trends are of interest. Moreover, this publication (together with its rival, the Canadian Legal Directory) is the only source of annual data on lawyers and law firms. When one omits the data for 1970 and 1971, it is evident that the number of law firms in Ontario was roughly stable in 1962 to 1965, rose from 2,650 to 2,950 between 1965 and 1973, jumped by 25% in 1974 and again in 1975, and then settled down to 7% or 8% increases in 1976 and 1977. (The numbers of lawyers and society members included in this table are considered in the next chapter of this paper.)

In the examination of market structure, consider first the geographical distribution of law firms. The distribution by county or district in 1971 is shown in Table V.3. This indicates that 44% of the firms are in York county or Metro Toronto. The data in Table V.3 are one useful check on the suitability of responses to the 1977 survey.

TABLE V.1

Offices of Lawyers and Notaries, selected characteristics,
Ontario, 1971.

Firms:	total	2,302
Partners: ^a	total	3,960
(and solo lawyers)	per firm	1.7
Net revenue: ^c	total	\$257,055,000
	per firm	\$111,666
	per partner	\$64,913
Employees: ^b	total	11,260
	per firm	4.9
Payroll: ^c	total	\$99,481,000
	per firm	\$43,215
	per employee	\$8,835
Partners plus employees:	total	15,220
	per firm	6.6

a - shown in source as "number of working proprietors"

b - includes lawyers and non-lawyers

c - revenue and payroll data are for the 1971 calendar year or any twelve-month period which ended between April 1, 1971 and March 31, 1972.

Source: Statistics Canada, Provinces and Cities by Kind of Business,
1971 Census Vol. IX, No. 97-742, Table 1.

TABLE V.2

Lawyers and Notaries and Law Offices in Ontario, 1962-1977

	Lawyers and Notaries		
<u>Year</u>	<u>Members in Law Society</u>	<u>Number in^{b,c} Law List</u>	<u>Law Offices^d</u>
(as at January)			
1962	5,317	4,655	2,628
1963	5,501	4,735	2,587
1964	5,651	4,848	2,611
1965	5,850	5,087	2,658
1966	5,942	5,246	2,729
1967	6,136	5,414	2,757
1968	6,327	5,521	2,844
1969 ^a			
1970	7,381	6,390	2,543
1971	7,666	6,818	2,418
1972	7,610	6,889	2,905
1973	8,668	7,512	2,951
1974	9,277	8,072	3,683
1975	10,025	9,342	4,606
1976	10,572	10,027	4,956
1977 ^e	11,542	10,679	5,296

a data not published for 1969

b excludes lawyers in corporations' law departments, company offices or employees

c the difference between law society rolls and numbers of lawyers in the Law List is due to at least three factors: 1) lawyers who are retired, non-active, or in business; 2) lawyers who are members of two or more law societies; and 3) lawyers who are in government departments or who are court officials.

d includes public sector law offices (government, courts, institutions) as well as private law offices.

e as of April

Source: Canadian Law List, Toronto: Canada Law Book Ltd., annual.

TABLE V.3

Offices of Lawyers and Notaries, by county or district,
Ontario, 1971.

<u>County</u>	<u>No.</u>	<u>County</u>	<u>No.</u>	<u>County</u>	<u>No.</u>
Algoma	23	Huron	14	Peel	54
Brant	15	Kenora	6	Perth	18
Bruce	13	Kent	26	Peterborough	19
Cochrane	16	Lambton	25	Prescott	5
Dufferin	6	Lenark	10	Prince Edward	5
Dundas	3	Leeds	11	Rainy River	5
Durham	8	Lennox and		Renfrew	15
Elgin	20	Addington	2	Russell	1
Essex	80	Manitoulin	1	Simcoe	40
Frontenac	30	Middlesex	75	Stormont	12
Glengarry	1	Muskoka	9	Sudbury	31
Grenville	6	Niagara	73	Thunder Bay	21
Grey	20	Nipissing	13	Timiskaming	7
Haldimand	8	Norfolk	12	Toronto	987
Haliburton	4	Northumberland	12	Victoria	8
Halton	45	Ontario	43	Waterloo	68
Hastings	32	Ottawa-Carleton	121	Wellington	24
		Oxford	23	Wentworth	139
		Parry Sound	5	York	32

TOTAL: 2,302

Source: Statistics Canada, Service Trades,
Vol. IX, No. 97-743, Table 6.

Note, for example, that Table V.4 shows 43% of the responses were from York and Metro Toronto. Other county-by-county comparisons show slight variations, but the general picture is a reasonably close match between the geographic distributions for the two years. More rigorous comparisons would need to take account of differential population growth rates by county, but in the short period represented this is not deemed to be a serious problem.

Table V.5 shows a more aggregative geographical distribution of the firms in 1977, with 42% in Metro Toronto (population over 500,000) and another 24% of the firms in centres with 100,000 to 500,000 population. This accounts for two-thirds of the law firms.

The distribution of law firms by size is presented in Table V.6. Over half (54%) of the firms in Ontario in 1977 are solo practitioners, with a higher percentage in Toronto (59%) than in the rest of Ontario (50%). Conversely, there is a smaller percentage of firms with two to four lawyers in Toronto (34%) than in the rest of the province (43%). Note especially that only 2% of the firms have ten or more lawyers, but that the incidence of large firms is much greater in Toronto than elsewhere.

Set against this distribution of firms by size, in terms of lawyers, is the distribution by size in terms of gross professional fee revenue as displayed in Table V.7. This is one measure of the degree of industrial concentration in the market for legal services.⁴ The legal services market seems quite competitive; table V.7 indicates that 1% of the firms (28 out of 2,302) accounted for 20% of the fees revenues. If one includes the next group of firms on the revenue side, one finds that a total of 2.5% of the firms (or 58 firms) account

TABLE V.4

Location of Law Firms, by County or District, Ontario, 1977.

<u>County or District</u>	<u>No.</u>	<u>Per Cent</u>	<u>County or District</u>	<u>No.</u>	<u>Per Cent</u>
Algoma	19	1	Niagara	69	4
Brant	19	1	Nipissing	12	1
Bruce	8	0	Northumberland	14	1
Cochrane	12	1	Ottawa	116	6
Dufferin	9	0	Oxford	14	1
Durham	40	2	Parry Sound	4	0
Elgin	13	1	Peel	51	3
Essex	55	3	Perth	5	0
Frontenac	38	2	Peterborough	18	1
Grey	16	1	Prescott-Russell	3	0
Haldimand-Norfolk	13	1	Prince Edward	4	0
Haliburton	1	0	Rainy River	5	0
Halton	47	2	Renfrew	12	1
Hamilton-Wentworth	124	6	Simcoe	43	2
Hastings	22	1	Stormont-Dundas-		
Huron	5	0	Glengarry	12	1
Kenora	7	0	Sudbury Region	11	1
Kent	18	1	Sudbury District	7	0
Lambton	23	1	Thunder Bay	15	1
Lanark	7	0	Timiskaming	9	0
Leeds-Grenville	7	0	Toronto ^a	150	8
Lennox & Addington	5	0	Victoria	9	0
Manitoulin	1	0	Waterloo	68	4
Middlesex	56	3	Wellington	19	1
Muskoka	9	0	York ^a	681	35
			TOTAL:	1,925	100

a - data for Toronto and York should be aggregated since there are far more firms in the municipality of Metro Toronto than in York County.

Source: Law Firm Survey, Q.I.1.

TABLE V.5

Distribution of law firms by size of municipality, Ontario, 1977.

<u>Population of Municipality</u>	<u>Percentage of firms</u>
Less than 5,000	5
5,000 - 30,000	12
30,001 - 100,000	16
100,001 - 500,000	24
500,001 or more	<u>42</u>
	TOTAL: 100
	(N=1980)

Source: Law Firm Survey, Q. I.2

TABLE V.6

Distribution of law firms by size of firm, Ontario, 1977

<u>Firm Size</u> (no. of lawyers)	<u>Percentage of firms</u>		
	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
1	54	59	50
2 - 4	39	34	43
5 - 9	5	4	6
10 or more	2	3	1
TOTAL: (N=1882)	100	100	100

Source: Law Firm Survey, Q. I.4

TABLE V.7

Offices of Lawyers and Notaries, by size of annual net receipts, Ontario, 1971

Annual net receipts	Number of firms	Firms		Net Receipts ^a		
		Percentage of total	Cumulative Percentage	Net receipts (\$ millions)	Percentage of Total	Cumulative Percentage
\$1,000,000 and over	28	1.2	1.2	50.1	19.5	19.5
500,000-999,999	31	1.3	2.5	19.9	7.7	27.2
200,000-499,999	195	8.5	11.0	58.5	22.8	50.0
100,000-199,999	436	18.9	30.0	61.1	23.8	73.8
75,000-99,999	211	9.2	39.2	18.3	7.1	80.9
50,000-74,999	343	14.9	54.1	21.1	8.2	89.1
30,000-49,999	431	18.7	72.8	17.0	6.6	95.7
10,000-29,999	449	19.5	92.3	9.8	3.8	99.5
Less than 10,000	178	7.7	100.0	1.2	0.5	100.0
total	2,302	100.0		\$257.1	100.0	

a net receipts are for the 1971 calendar year or any twelve month period which ended between April 1, 1971 and March 31, 1972.

Source: Statistics Canada, Size of Business, 1971 Census, Vol. IX, No. 97-745, Table 9

for only 27% of the total revenues from professional fees. This is obviously an unconcentrated market, at least on a province-wide basis.⁵

Unfortunately, data are not available to determine the number of lawyers included in the firms within each revenue class. The Canadian Law List, however, affords an approximation of this number if it can be assumed that there is a close correlation between firm size by number of lawyers and by total revenues. Table V.8 lists the largest law firms in Ontario in the 1972 List (because the 1971 census data and the 1972 List data are for the same time period). This indicates that the 28 firms in Table V.7 would have included firms with at least 16 lawyers, and that all but one of these firms were located in Toronto. The 28 firms include a total of 797 lawyers (including firms' counsel), for an average firm size of 28.5 lawyers. The fees revenues of these firms (if they coincide with the 28 highest-revenue firms in the census) averages \$62,900 per lawyers compared with \$34,200 for all other lawyers in the balance of Ontario's law firms.

The supply of services according to location of clients is shown in Table V.9. For firms of less than ten lawyers, whether in or outside Toronto, about 85% to 90% of the clients come from their own counties or districts, with another 10% or 11% from outside that area. The more notable data are those for clients outside Ontario, and the location of clients of large firms. It is curious that even the smallest firms (both in and out of Toronto) have clients from outside Ontario. In some cases these are foreign buyers of recreational properties. The larger firms have a much larger percentage of non-Ontario clients (12% - 13%), who would include national and multinational

TABLE V.8

Law Firms in Ontario^a with largest number of lawyers, 1971

<u>Name of Firm</u>	<u>Number of Lawyers^b</u>
Bassel, Sullivan, Holland & Lawson	16
Blake, Cassels & Graydon	67
Blaney, Pasternak, Smela, Eagleson & Watson	23
Borden, Elliot, Kelley & Palmer	44
Campbell, Godfrey & Lewtas	19
Cassels, Brock	18
Day, Wilson, Campbell	20
Faskin & Calvin	35
Fraser & Beatty	46
Gardiner, Roberts	22
Goodman & Carr	21
Harries, Houser, Brown & McCallum	28
Holden, Murdoch, Walton, Finlay, Robinson	22
Lang, Michener, Cranston, Farquharson, & Wright	25
Lash, Johnston, Sheard & Pringle	17
Manning, Bruce, MacDonald & MacIntosh	18
McCarthy & McCarthy	56
McMillan, Binch	30
Miller, Thomson, Sedgewick, Lewis & Healy	16
Osler, Hoskin & Harcourt	53
Robertson, Lane, Perrett, Frankish & Estey	20
Shibley, Righton & McCutcheon	18
Thomson, Rogers	43
Tilley, Carson & Findlay	17
Tory, Tory, Deslauriers & Binnington	23
Wahn, Meyer, Smith, Creber, Lyons	26
Weir & Foulds	19
Gowling & Henderson (Ottawa)	<u>35^c</u>
TOTAL:	797

a - all firms except last on list are located in Toronto

b - includes firm's counsel

c - excludes patent and trade mark agents

Source: Canadian Law List, 1972

NOTE: For a related Table, see p. 194 below.

TABLE V.9

Percentage distribution of law firms' clients by location, by location and size of firm, Ontario, 1976.

		Firm Size (No. of lawyers)			
<u>Location of Clients</u>	<u>Total</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
	(N=1829)				
<u>Total</u>					
Own county	53	49	58	56	27
Metro Toronto	36	40	31	31	48
Rest of Ontario	9	9	9	8	13
Outside Ontario	2	2	2	5	13
<u>Toronto</u>					
Own county					
Metro Toronto		89	87	80	71
Rest of Ontario		9	10	13	16
Outside Ontario		2	3	7	12
<u>Other</u>					
Own county		84	86	84	78
Metro Toronto		4	3	6	3
Rest of Ontario		9	8	6	6
Outside Ontario		2	1	4	13

Source: Law Firm Survey, Q. IV.3

corporations doing business in Ontario. Similarly, the Toronto firms have a larger share of clients outside Toronto than is the case for the smaller Toronto firms.

Table V.10 shows primarily the major differences in type of clients between the smaller firms (of less than five lawyers) and the larger firms. The former count businesses and other organizations as only 20% to 25% of their clients, while the largest firms report that this group represents 63% of their clients. There is also notable variation between the Toronto and non-Toronto firms of similar size in the composition of their clients. For the small Toronto firms businesses represent 24% to 32% of their clients but businesses are only 17% to 20% of the clients of the non-Toronto small firms.

The largest Toronto firms have public corporations as 21% of their clients, but these are only 7% of the clients of the large non-Toronto firms.

The nature of a firm's clients is a major determinant of the legal services a firm will be asked to supply. This relationship is quantified when one compares Table V.10 and Table V.11. The latter shows that for the small firms real estate represents 32% (for Toronto firms) to 42% (non-Toronto firms) of their billable time, whereas for the largest firms in Toronto real estate services account for only 21% of their time. The major activity for these firms (35% of their time) is in corporate and commercial law. This coincides with the relatively greater importance of businesses (62% of the total) among the clients of the larger Toronto firms.

The Toronto firms in total tend to spend more time than their

TABLE V.10

Percentage distribution of law firms' clients by type of client,
by location and size of firm, Ontario, 1976.

<u>Type of Clients</u>	<u>Firm Size (No. of lawyers)</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
<u>Total</u> (N=1809)				
Public corporations	3	4	8	16
Non-public corporations and unincorporated business	17	21	30	42
Legal Aid recipients	14	11	8	4
Other individuals	61	60	48	33
Government and non-profit	3	3	5	5
Other	1	1	1	0
 <u>Toronto</u>				
Public corporations	3	5	13	21
Non-public corporations and unincorporated business	21	27	38	41
Legal Aid recipients	15	11	6	4
Other individuals	58	54	40	29
Government and non-profit	3	2	3	6
Other	0	1	0	0
 <u>Other</u>				
Public corporations	3	3	6	7
Non-public corporations and unincorporated business	14	17	26	44
Legal Aid recipients	13	11	9	4
Other individuals	64	64	52	39
Government and non-profit	4	4	7	5
Other	1	0	0	1

Source: Law Firm Survey, Q.IV.4

TABLE V.11

Percentage distribution of law firms' billable time by category of legal services, and by size and location of firm, Ontario, 1977.

<u>Category</u>	<u>Toronto, by Firm Size</u>				<u>Other, by Firm Size</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil litigation	13	16	23	20	11	14	20	17
Criminal litigation	15	10	5	5	10	10	7	4
Corporate, commercial	15	17	24	35	9	11	16	13
Real estate	32	32	28	21	42	40	29	29
Tax	2	2	2	4	2	2	2	2
Wills, estates	9	8	8	4	13	12	11	8
Family	9	9	4	2	9	8	6	5
Administrative	1	2	2	7	1	1	2	5
Labour Relations	0	1	1	1	0	1	1	2
Industrial property	1	1	0	0	0	0	1	11
Admiralty	0	0	0	0	0	0	0	0
Other	2	1	2	1	2	1	3	1

(N=1813 firms)

Source: Law Firm Survey, Q.IV.1

similarly-sized non-Toronto counterparts in civil and criminal litigation, and in corporate and commercial law; and to spend less time in real estate, and wills and estates. There is little geographical differentiation for firms of comparable size in the time spent on tax matters (with the exception of the largest Toronto firms), and other fields of law.

Table V.12 shows the relative importance of the ten largest clients in the overall revenues (approximated by billable hours) of law firms. The most notable feature is that regardless of size or location of the firms, the ten clients with the largest accounts are estimated to receive 30% to 40% of the firm's time. The non-Toronto firms show even more uniformity in this regard than the Toronto firms: for the former the percentage of time attributed to the ten largest accounts ranges only from 27% to 33%. Moreover, for firms of similar size, the non-Toronto firms attribute a smaller percentage of their total time (by about 10 percentage points) to the ten largest clients - with the exception of the largest firms, which show virtually no geographical differentiation.

Consider what these data imply in terms of the legal services provided for each of the largest clients. Table VI.5 shows that the largest Toronto firms (ten or more lawyers) had an average of 23.4 lawyers and the largest non-Toronto firms averaged 12.0 lawyers. Suppose each of these lawyers had 1200 billable hours per year (since the legal profession seems to regard 1000 to 1600 hours as a reasonable range). The Toronto firms would supply 28,080 billable hours per year, with 33% or 9,266 hours going to the ten largest clients. Hence each of the "big ten" clients receive an average of 927 hours.

TABLE V.12

Percentage of law firms' total billable hours billed to firm's
10 largest client accounts, by size and location of firm, Ontario, 1976.

<u>Firm Size</u> (No. of lawyers)	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
1	36	42	31
2 - 4	31	37	27
5 - 9	35	44	30
10 and over	33	33	32
Total (N=1447)	34		

Source: Law Firm Survey, Q.IV.5

If this time is billed at an average of \$75 per hour, the largest clients are billed an average of \$70,000 annually. Similar calculations show that the average client among the "big ten" for non-Toronto firms is billed about \$28,000. Clients of these relative magnitudes would be expected to exercise much more influence on the market in terms of preferential treatment, prices, and quality of service than the client who is on a Legal Aid certificate or whose service requirement is a \$500 divorce or real estate conveyance.

Footnotes

1. Industry class 866 in the Standard Industrial Classification Manual (third edition, 1970), No. 12-501, Statistics Canada.
2. Ibid., p. 41. Note that these data include notaries' offices in Quebec but not in other provinces.
3. 1971 Census, Service Trades, Vol. IX, No. 97-747, Table 17.
4. See Chapter VIII for a fuller treatment of market concentration.
5. Ibid.

VI. Economic Analysis of the Market for Lawyers' Services:
Markets for Legal Personnel

1. Labour Services of Legal Personnel: Definition and Data
2. The Demand for Labour Services
3. The Supply of Labour Services by Law Personnel
4. Salaries, Earnings and Hourly Rates

Footnotes

VI. Markets for Legal Personnel

Legal personnel include all who offer labour services that are used to produce legal services: lawyers, legal secretaries, paralegals (law clerks, title searchers, patent agents, etc.), and others such as bookkeepers and office managers. Such persons are employed not only in law firms but also in the other organizations which offer legal services. This chapter will deal with lawyers primarily since data on paraprofessionals is included in chapter X. Some discussion of paralegals is included en passant with the discussion of the demand for and supply of lawyers' services.

This chapter first reviews the services and definitions of data on the labour services of legal personnel, then examines the demand for these services in both conceptual and empirical terms, and finally examines the empirical characteristics of the supply side of the market.

1. Labour Services of Legal Personnel: Definition and Data

The data used in this chapter are drawn primarily from three sources: the 1971 census of Canada (both the population census and the census of merchandising and services), the 1973 Highly Qualified Manpower Survey by Statistics Canada, and the Ontario Professional Organizations Committee's (POC) 1977 survey of law firms in Ontario.

Census. The detailed occupation titles included in Lawyers and Notaries (code 2343) and in Others in Law and Jurisprudence (code 2349) under the current classification system, the Canadian Classification and Dictionary of Occupations (CCDO), 1971, are as follows:

2343 Lawyers and Notaries

Admiralty Lawyer — Defence Ser.
 Advisory Counsel — Dept. of Justice
 Advocate — Any Ind.
 Attorney — Any Ind.
 Attorney-At-Law — Legal Ser.
 Barrister — Any Ind.
 City Attorney — Local Admin.
 City Solicitor — Local Admin.
 Civil Lawyer — Legal Ser.
 Claim Attorney — Any Ind.
 Conveyancer (Titles) — Real Estate
 Corporation Counsel — Any Ind.
 Corporation Lawyer — Any Ind.
 Counsellor (Lawyer) — Any Ind.
 Counsellor-At-Law — Any Ind.
 County Attorney — Local Admin.
 Criminal Lawyer — Any Ind.
 Crown Prosecutor — Gov. Ser.
 Insurance Attorney — Insurance
 Law Examiner — Public Admin.
 Lawyer — Any Ind.
 Legal Adjuster — Any Ind.
 Legal Adviser — Any Ind.
 Legal Counsel — Any Ind.
 Legal Examiner — Public Admin.
 Legal Referee — Legal Ser.
 Manager — Legal Ser.
 Notary (In Province of Quebec) — Any Ind.
 Notary Public (In Province of Quebec) — Any Ind.
 Patent Attorney — Any Ind.
 Patent Lawyer — Any Ind.
 Patent Solicitor — Any Ind.
 Prosecuting Attorney — Any Ind.
 Prosecutor — Any Ind.

Queen's Counsel — Legal Ser.; Public Admin.
 Real Estate Attorney — Any Ind.
 Real Estate Lawyer — Any Ind.
 Solicitor — Legal Ser.
 Tariff Counsel — Public Admin.
 Tax Attorney — Public Admin.; Legal Ser.
 Tax Representative — Public Admin.; Legal Ser.
 Title Attorney — Any Ind.
 Title Lawyer — Any Ind.
 Trial Examiner — Public Admin.

2349 Others In Law & Jurisprudence, N.E.C.

Abstract Searcher — Any Ind.
 Abstract Writer — Any Ind.
 Articled Clerk — Law Office
 Articled Student — Law Office
 Brief Writer, Law — Legal Ser.
 Contract Analyst — Any, Except Govt. or Labour
 Organization
 County Ordinary — Local Admin.
 Law Clerk — Any Ind.
 Lease & Title Clerk — Petrol. Prod.; Petrol. Refin.;
 Pipe Lines
 Legal Administrator — Public Admin.
 Notary (In Provinces Other than Quebec) — Any
 Ind.
 Notary Public (In Provinces Other than Quebec)
 — Any Ind.
 Patent Agent — Any Ind.
 Patent Clerk — Any Ind.
 Student — Law Office
 Title and Lease Clerk — Petrol. Prod.; Petrol.
 Refin.; Pipe Lines
 Title Clerk — Petrol. Prod.; Petrol. Refin.; Pipe
 Lines
 Title Examiner — Real Estate

Note that Notary and Notary Public in Quebec are included with the lawyers, but that notaries in other provinces are included in the "Others" category. This is because notaries in Quebec must have a law degree and do perform different functions from the notaries in other provinces. The Census Classification Manual defines lawyers and notaries as follows:

"This unit group includes occupations concerned with drawing up and authenticating legal documents; taking affidavits and administering oaths and affirmations; pleading cases or conducting

prosecutions in courts of justice; advising clients on the legal aspects of personal and business problems; and representing them in lawsuits."

Only persons who are working as lawyers are included; that is, law teachers, judges, and other persons who may have a law degree and who may indeed be current members of a law society but who are not working as lawyers are excluded.

The number of persons in class 2349 was so small that cross-classifications of data for this group were generally not published separately in the census publications; and certainly not by province, which would be necessary to isolate data on this group for Ontario. It is known, for example, that "other law occupations" employed in law offices in Canada in 1971 totalled only 1,760 males and 385 females.¹ Furthermore, the most important group of paralegals, the legal secretaries, cannot be separated from the general class of secretaries, typists, and stenographers.

Highly Qualified Manpower Survey. In the fall of 1973, Statistics Canada conducted a questionnaire survey of a sample of university graduates identified in the 1971 census. This Highly Qualified Manpower Survey (HQMS) uses the CCDO classification for lawyers and notaries. The HQMS data on lawyers are therefore comparable with the census data, with one qualification: the HQMS data are restricted to those with a university degree. Unfortunately, many of the tables in the HQMS microfilm are based on "population with a degree" rather than on occupations and hence it is not possible to extract many tabulations on lawyers without going to special tabulations from the

original data files.

Survey of Law Firms. The Ontario Professional Organizations Committee conducted a mailed questionnaire survey of all law firms in Ontario (approximately 4,500) in early summer, 1977, and received responses from 50% of the firms. The questionnaire is appended to this report. The responses are used here as illustrative data on variables for which there previously have been no quantitative data.

2. The Demand for Labour Services

The demand for lawyers' services (as distinct from the services of paralegals) is somewhat unusual among labour markets in that lawyers are the major purchasers of their own services, namely as partners in law firms. This is one aspect of demand which does create difficulties for the efficient operation of the market, as Robt. Evans has argued:

"This creates a further conflict of interest between the professional-as-entrepreneur, interested in minimizing production costs, and the professional-as-worker, interested in maintaining the demand for his/her own skilled time. Cost-minimization through delegation of services to auxillary workers, for example, given a fixed total volume of services produced, may lower unit costs of production but at the same time lower the utilization of professional time itself. Profits of the professional enterprise may rise, but the take home pay of the professional falls. Hence the professional enterprise may not choose least-cost ways of producing output, but instead may be biased toward overuse of high-cost professional time."²

Empirical data on the demand for legal personnel services are few. The occupational composition of demand for the services of law school graduates is shown in Table VI.1. The total population in full-time employment in Ontario in 1973 and who had law degrees numbered 9,595. Of these, 63% were lawyers. Among those with a bachelor of law degree, 65% were lawyers, and 11.5% were in other law occupations. (A substantial part of this group were the articling students who have their LL.B. degrees but are not yet lawyers.) Another 5.7% were in management and administration and 2.2% were judges; the remainder were widely scattered among other occupations.

Persons with masters degrees in law were primarily lawyers (35%) but another 28% were university teachers. The precise numbers for doctorate graduates are less meaningful due to the Statistics Canada practice of random rounding of data to multiples of five.

Income data are included in Table VI.1 but these are considered toward the end of this chapter, after demand and supply have been examined.

If one assumes that persons in "other law occupations" are mainly articling students en route to the Bar, Table VI.1 suggests that at least 80% of the LL.B. graduates are in or close to the practise of law - including judges and law teachers. This number is a minimum estimate since some of the population earned their law degrees outside Canada and would not be able to practise without passing through law school again.

The extent of occupational mobility of lawyers is also noted in Tables VI.2 and VI.3. Among the lawyers who have joined firms in the past four years, 94% to 99% came from the Bar Admission course

TABLE VI.1

Population with Law Degrees^a, by occupation of job of longest duration held in the last twelve months, and by level of degree, with average income by degree level for persons who worked 40-52 weeks full-time, Ontario, 1973.

Occupation	Bachelor		Masters		Doctorate	
	Number	Percentage	Number	Percentage	Number	Percentage
Government Adminsitrators	170	5.7	20	11.4	5	17.6
General Managers	145		20		10	
Other Managerial/admin.	200		10		0	
Accountants, auditors	80	0.9	0		0	
Economists	50	0.6	0		0	
Judges & magistrates	200	2.2	0		0	
Lawyers & notaries	5,895	65.0	155	35.2	20	23.5
Other law occupations	1,040	11.5	15	3.4	0	
University teachers	55	0.6	125	28.4	20	23.5
Other teaching	50	0.6	5	1.1	0	
Artistic, Literary, occs.	95	8.3	0	18.2	0	5.9
clerical and related occs.	165		65		5	
Sales occupations	175		0		0	
Other occupations	315		15		15	17.6
Occupations not stated	60	0.7	5	1.1	0	
No occupation	375	4.1	5	1.1	10	11.8
Total	9,070	100.0	440	100	85	100

Average Income(b)	Total		Bachelor		Masters		Doctorate	
	Male	Female	Male	Female	Male	Female	Male	Female
	\$26,200	14,100	26,200	14,000	25,900	-	22,700	-

a Excludes law graduates who later earned a higher degree in a different field of study and 40 persons with a graduate diploma or certificate (35 of whom are lawyers or notaries)

b Includes employment and non-employment income

TABLE VI.2

Percentage distribution of Lawyers in Firms by Employment prior to joining firm, by size and location of firm, Ontario, 1973-1977.

<u>Firm Size</u>	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
<u>One lawyer</u>			
Other law firm	36	27	43
Business	1	2	0
Government	2	2	1
Law Faculty	3	8	0
Bar Admission	58	61	56
<u>2-4 lawyers</u>			
Other law firm	26	30	24
Business	1	3	0
Government	2	2	2
Law faculty	2	1	2
Bar Admission	69	64	72
<u>5-9 lawyers</u>			
Other law firm	27	41	17
Business	0	0	1
Government	2	1	2
Law faculty	1	0	2
Bar Admission	70	58	78
<u>10+ lawyers</u>			
Other law firm	19	21	14
Business	1	2	0
Government	2	3	2
Law faculty	2	3	2
Bar Admission	75	73	83

(N = 1234)

Source: Law Firm Survey, Q.II.3a.

TABLE VI.3

Percentage distribution of Lawyers who left Firms, by destination, by size and location of firm, Ontario, 1973-1977.

<u>Firm Size</u>	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
<u>One lawyer</u>			
Other law firm	74	75	74
Business	7	8	6
Government	9	9	9
Law faculty	1	0	1
Retirement, death	9	9	10
<u>2-4 lawyers</u>			
Other law firm	76	82	72
Business	5	6	5
Government	8	7	9
Law faculty	0	0	1
Retirement, death	11	5	14
<u>5-9 lawyers</u>			
Other law firm	74	70	77
Business	5	6	5
Government	13	19	9
Law faculty	0	0	0
Retirement, death	8	6	9
<u>10+ lawyers</u>			
Other law firm	64	63	67
Business	13	16	0
Government	8	8	13
Law faculty	2	1	4
Retirement, death	13	12	17

(N = 1234)

Source: Law Firm Survey, Q.II.3b.

or from other law firms. The exception is sole practitioners in Toronto: only 88% came from these sources while 8% were previously employed on a law faculty. When lawyers leave a particular law firm, they do so primarily to join another firm (60% to 85%), but leaving to go to business (5% to 15%) or to government (7% to 19%) is also important. It appears from Tables VI.2 and VI.3 therefore that there is a much stronger flow out of law firms toward business and government than is the reverse flow, even given that the total inflow of lawyers reported by law firms was approximately 30% greater than the outflow.

Total employment in the Ontario legal services industry (that is, in law offices) is compared with employment in law occupations in Table VI.4. There were 17,450 persons employed in law offices; even if all lawyers were employed in law offices (which is contrafactual) they would represent only 39% of law office personnel. Similarly persons employed in "other law occupations" could not represent more than 9% of the law office personnel. Hence, at least 52% (and probably closer to 60%) of the law office employment must be in other occupations, mainly secretarial.

Toronto in 1971 accounted for 51% of the total law office personnel but 56% of the lawyers in Ontario.

The occupational composition of law office personnel is examined further in Table VI.5. This confirms the higher lawyer: non-lawyer ratio in Toronto firms that was seen in Table VI.4. Consider first the variation in personnel by firm size for the province in total. The number of articling students per lawyer increases as the firm size increases (from 0.10 to 0.17): the number of paralegals per lawyer is remarkably similar to that seen

TABLE VI.4

Labour force in law offices, total lawyers and notaries, and other legal workers, by census metropolitan area and sex, Ontario, 1971.

Census Metropolitan Area	Labour force in <u>Law Offices</u>		Labour force in law occupations			
	Males	Females	<u>Lawyers and Notaries</u>		<u>Other law occupations^a</u>	
			Males	Females	Males	Females
Hamilton	355	585	300	15	50	30
Kitchener	205	265	155	-	45	5
London	360	415	290	10	85	10
Ottawa	550	720	625	50	195	55
St. Catharines	175	370	150	10	30	-
Sudbury	105	140	100	5	5	10
Thunder Bay	80	135	80	5	-	-
Toronto	3,985	4,905	3,585	220	695	155
Windsor	220	280	190	-	50	20
Sub-total	6,035	7,815	5,475	315	1,155	285
Ontario	7,295	10,155	6,500	345	1,295	330

a law occupations excluding lawyers and notaries, judges and magistrates; see p. 60 for list of occupational titles included.

Source: Statistics Canada, Labour Force: Industries, 1971, Census, Vol. III, Pt. 4, No. 94-742, Table 6, and No. 94-740, Table 2; and Labour Force: Occupations, Vol. III, Pt. 2, No. 94-719, Table 4.

TABLE VI.5

Mean Number of Individuals in Law Firms, by size and location of firm, Ontario, 1977.

<u>Mean Numbers in Law Firms</u>			
<u>Firm Size</u>	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
<u>One lawyer</u>	(N=1013)	(N=476)	(N=537)
Lawyers	1.0	1.0	1.0
Articling students	0.1	0.1	0.1
Paralegals	0.1	0.1	0.2
Legal secretaries	1.4	1.1	1.6
Others	<u>0.3</u>	<u>0.2</u>	<u>0.4</u>
Total	2.9	2.5	3.3
<u>2-4 lawyers</u>	(N=737)	(N=275)	(N=462)
Lawyers	2.5	2.5	2.6
Articling students	0.3	0.3	0.3
Paralegals	0.4	0.3	0.5
Legal secretaries	3.6	2.7	4.1
Others	<u>0.6</u>	<u>0.7</u>	<u>0.6</u>
Total	7.4	6.5	8.1
<u>5-9 lawyers</u>	(N=97)	(N=36)	(N=61)
Lawyers	6.3	6.6	6.1
Articling students	1.1	1.1	1.2
Paralegals	1.1	0.9	1.2
Legal secretaries	8.2	6.7	9.1
Others	<u>2.4</u>	<u>2.8</u>	<u>2.2</u>
Total	19.1	18.1	19.9
<u>10+ lawyers</u>	(N=35)	(N=24)	(N=11)
Lawyers	19.8	23.4	12.0
Articling students	3.4	4.2	1.6
Paralegals	3.7	4.3	2.5
Legal secretaries	23.4	27.3	15.0
Others	<u>9.0</u>	<u>10.5</u>	<u>5.7</u>
Total	59.3	69.7	36.8

Source: Law Firm Survey, Q.I.4.

for articling students; the number of legal secretaries per lawyer declines with larger firms (from 1.4 to 1.2); and the number of "others" per lawyer increases slightly with firm size. This may suggest that the larger firms substitute the labour of articling students and paralegals for the labour of legal secretaries, as the total scale of work increases enough to merit the additional workers and as the complexity of the work also increases to require the more specialized skills of law students and law clerks.

Now compare the occupational composition of firms of similar size in and out of Toronto. The firms located outside Toronto, in each size category, have a notably higher ratio of paralegals, legal secretaries, and "others" per lawyer. This pattern coincides remarkably with the greater percentage of time spent by non-Toronto firms on real estate, wills, and estates, as seen previously in Table V.11. This type of work has more routine procedures which can be handled by persons other than lawyers.

The particular labour services for which articling students, legal secretaries, and paraprofessionals are employed are presented in Table VI.6. The percentages shown here are based on the total number of firms providing at least one answer (filling at least one cell) on the complex matrix which is the basis for question III.5 in the law firm survey. Consequently, the percentages reflect not only the relative usage of different kinds of personnel and their various skills, but also the total composition of legal services offered by the respondent firms. More detailed analysis would examine the use of these three personnel groups within each field of law by those firms who did indeed work in those fields. Even at the level presented

TABLE VI.6

Percentage of law firms using students, secretaries, paralegals for specific tasks, by type of legal services, Ontario, 1977.

	Family	Wills	Estates	Real Estate	Corporate	Collections	Taxation	Civil litigation	Crime litigation	Mean
<u>Articling Students</u>										
Interviewing Clients	12	7	6	12	4	12	2	12	11	8.7
Fact Gathering	14	7	9	13	7	12	4	16	13	10.6
Preparing Documents	13	7	7	10	6	11	3	15	10	9.1
Letter Writing	12	7	9	12	6	13	4	14	9	9.6
Filing Documents	12	7	12	12	7	11	4	14	9	8.9
Negotiations	7	2	2	5	2	8	2	8	6	4.7
Advocacy	7	2	2	2	1	8	2	10	8	4.7
Dealing with lawyers	12	4	7	12	5	11	3	11	8	8.1
Legal Research	17	10	11	15	11	12	7	18	14	12.8
Public record search	13	9	13	16	10	12	6	15	10	11.6
Preparing invoices	7	5	5	8	4	8	2	7	6	5.8
<u>Legal Secretaries</u>										
Interviewing Clients	6	12	16	17	5	12	1	5	3	8.6
Fact Gathering	9	12	25	23	10	11	3	8	4	11.7
Preparing Documents	18	24	29	29	18	17	6	20	11	19.1
Letter Writing	29	31	43	46	27	30	10	28	18	29.1
Filing Documents	24	23	31	30	20	20	9	25	17	22.1
Negotiations	1	1	2	3	1	2	0	1	0	1.2
Advocacy	1	1	0	1	0	1	0	0	0	0.4
Dealing with lawyers	9	7	13	27	8	8	2	9	5	9.8
Legal Research	2	1	3	3	1	1	0	2	0	1.4
Public record search	8	7	12	16	8	7	3	8	6	8.4
Preparing invoices	22	29	29	36	20	20	10	20	17	22.6
<u>Paraprofessionals</u>										
Interviewing Clients	2	3	4	13	1	5	1	3	3	3.9
Fact Gathering	4	3	5	16	3	6	1	6	4	5.3
Preparing Documents	2	2	3	8	3	5	1	4	1	2.8
Letter Writing	3	3	5	11	3	6	1	4	3	4.3
Filing Documents	11	6	12	18	8	10	4	14	6	8.9
Negotiations	1	1	1	3	0	3	0	2	1	1.3
Advocacy	0	0	0	0	0	2	0	1	1	0.6
Dealing with lawyers	4	3	4	13	2	4	2	4	4	4.4
Legal Research	2	2	2	5	2	3	1	3	1	2.3
Public record search	11	9	13	23	10	9	3	12	6	10.7
Preparing invoices	4	4	4	8	4	5	1	4	2	4.0

Source: Law Firm Survey, Q.III.5

in Table VI.6 it has been necessary to combine the responses for "supervised" and "unsupervised" in each category in order to accommodate the results on a single page for easier comparisons. The mean values on the right of Table VI.6 are the mean percentages for each law, and are included to show more quickly the relative importance of different skills or job functions performed.

Articling students are used most frequently for legal research (notably in family law and civil litigation) and for searches of public records in real estate and civil litigation. This is followed by fact gathering and letter writing. The least use of articling students is for negotiations and advocacy; this is to be expected since those are skills which are acquired through experience and for which students are therefore least prepared.

Legal secretaries are used primarily for letter writing, with preparing clients' invoices, filing documents and preparing documents taking approximately equal importance in second place. Some use is also made of legal secretaries for fact gathering, and interviewing clients, dealing with lawyers, and searches in public records.

Paraprofessionals are used primarily in public records searches and for filing documents (especially in real estate) and to a somewhat lesser extent for fact gathering, letter writing, and dealing with lawyers, again particularly in real estate.

The age and education of the female labour force in law offices is shown in Table VI.7. Recall from Table VI.4 that of these 10,155 females, only 345 were lawyers and 330 were in other law occupations (including articling students). It would appear therefore that the 405 persons shown in Table VI.7 as having a university degree

TABLE VI.7

Female Labour Force^a in offices of lawyers and notaries by age and education, Ontario, 1971

<u>AGE</u>	<u>Number</u>	<u>Percentage</u>	<u>Education</u>	<u>Number</u>	<u>Percentage</u>
15-19	750	7.4	less than grade 9	275	2.7
20-24	2,815	27.7	grade 9 and 10	1,175	11.6
25-34	2,740	27.0	grade 11	1,240	12.2
35-44	1,665	16.4	grade 12 and 13	6,405	63.1
45-54	1,265	12.5	some university	660	6.5
55-64	690	6.8	university degree	405	4.0
65-and over	225	2.2			
total	10,150	100.0	total	10,150	100.0

average age 33

a includes 345 female lawyers and notaries (3.4 per cent of the total), of whom 105 are self-employed, solo practitioners or partners, and 40 female unpaid family workers.

Source: Statistics Canada, Labour Force by Industry, 1971 Census, Vol. IX, No. 94-751, Table 1.

are largely accounted for by the lawyers and articling students. The majority of what must therefore be legal secretaries and typists have grade 12 or grade 13 education, but almost 30% of this secretarial group have completed less than grade 12. About 55% of the females are in the 20 to 34 year age group, with an overall average age of 33 years.

Some evidence on the employment of articling students is provided by Table VI.8. This indicates very clearly that law firms place a fairly low value on the use of articling students, in terms of the students' contribution to the output of the firm. The aggregated results show that "students are financially viable" was ranked lowest among the possible reasons for firms hiring students, and that the larger the firm the lower the ranking of this reason. Individual firms had their own primary reason for hiring articling students; these were included in "other" and hence that category tended to be top-ranked. Otherwise, the responses seem to indicate that firms attach a high degree of importance both to their responsibility in the legal and training process and to the opportunity for evaluating students as potential employees. This latter factor becomes more important in the larger firms.

Further evidence on the employment experience of articling students is provided by Table VI.9. Only 4% of the articling students employed by law firms in the past four years left the firm before completing the articling period. This phenomenon was strongest in the small, non-Toronto firms where 6% of the students left prematurely.

The lower part of the same table indicates that 26% of the respondent firms rehired as junior lawyers the persons who had previously

TABLE VI.8

Relative importance of reasons for hiring articling students, by size and location of law firms, Ontario, 1977.

(Respondents ranked reasons on scale of 1 to 4, 1 being "very important")

	<u>Firm Size (no. of lawyers)</u>			
<u>Total Firms</u> (N = 840)	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Responsibility to legal education	2.0	2.0	1.9	1.6
Students are financially viable	2.6	2.7	2.9	2.9
Evaluating potential employees	2.4	2.2	2.0	1.3
Other	1.9	1.6	1.9	2.5
<u>Toronto</u>				
Responsibility to legal education	2.0	2.1	2.2	1.6
Students are financially viable	2.5	2.8	3.0	2.9
Evaluating potential employees	2.7	2.3	2.0	1.4
Other	2.0	1.7	1.7	2.5
<u>Other</u>				
Responsibility to legal education	2.0	2.0	1.7	1.6
Students are financially viable	2.7	2.6	2.8	3.1
Evaluating potential employees	2.3	2.2	2.0	1.2
Other	1.8	1.5	2.0	0.0

Source: Law Firm Survey, Q.III.4.

TABLE VI.9

Percentage of articling students leaving law firms before completing articling period, Ontario, 1973-1977.

<u>Firm Size</u> (no. of lawyers)	<u>No. of firms</u>	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
1	112	6	5	6
2-4	244	5	8	4
5-9	74	1	2	1
10+	31	3	4	0
Total	461	4		

Percentage of articling students rehired by same firm as junior lawyers, Ontario, 1977.

<u>Firm Size</u> (no. of lawyers)	<u>No. of firms</u>	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
1	112	7	5	10
2-4	249	28	24	31
5-9	76	42	48	39
10+	31	41	36	51
Total	468	26		

Source: Law Firm Survey, Q. III.3.

been employed by the firm as articling students. This effect was strongest outside Toronto, where the smaller firms rehired 31% of their students and the largest firms rehired 51%. On the other hand, the smallest Toronto firms rehired only 5%, while firms of the same size outside Toronto rehired 10% of their students. The small percentage of single-lawyer firms indicating that they rehired articling students as junior lawyers probably reflects those sole practitioners who have hired their current students to act as junior lawyers once they are qualified.

3. The Supply of Labour Services by Law Personnel

This section of the chapter will deal primarily with lawyers and to a lesser extent with non-lawyer legal personnel.

The supply of lawyers' services is dependent on the number of lawyers and the amount of time the lawyers are willing to supply to the market. In the very short run, only the amount of time can be varied, but over a longer period some persons who are not working as lawyers but who are qualified to practise (law teachers, and housewives temporarily out of the labour force) could offer their service as lawyers. In the long run, the number of lawyers can be changed through law school graduates, migration, retirement, and deaths.

Data on the supply of lawyers in the long run, and then for the short run, is drawn from the same sources that were described for the demand side. Data from the Canadian Law List were included in Table V.2. These illustrate the growth of Law Society membership of 5,300 to 11,500 members in the 15 years since 1962. The number of

lawyers grew in the same period from 4,700 to 10,700. The List data for lawyers agree closely with the census data, namely 6,889 for 1972 (in fact valid as of November, 1971) compared with 6,845 in the 1971 census (as at June, 1971). The List data exclude corporate lawyers and hence actually exceed the census data by possibly 400 to 500. The data on lawyers in Table V.2 indicate that since the 1971 census, the number of lawyers in Ontario has increased by 55%. This is a faster rate of growth than at any other time in the past four decades, with annual increases during 1972 to 1977 of about 7% except in 1974-75 when the growth rate was 16%.

The rapid increase in number of lawyers is of course based on the similar, earlier rapid increase in enrolments in Ontario law schools. These data are shown in Table VI.10. An increase in law school enrolment should have its just effect on the number of lawyers about five years later (given three years for law school and two years for articling and the bar admission course). To a certain extent this is true (when for example data in Table VI.10 are compared with Table V.2) but the strong changes in enrolments noted in 1963-1965 and 1968-1970 are levelled off in terms of changes in the lawyer stock. It should also be noted that since 1968, the enrolments in Ontario law schools have been increasing more rapidly than in other Canadian law schools and that therefore the Ontario schools now account for about 43% of the Canadian total.

Enrolments by individual law schools are shown in Table VI.11, up to 1971/72 when Statistics Canada discontinued this series in its annual publication of university enrolments. It should be noted here, however, that while Osgoode Hall was the dominant school up to 1960,

TABLE VI.10

Enrolment in Law Schools, full-time undergraduates, Ontario,
1960/61 to 1965/76.

<u>Year</u>	<u>Total Enrolment</u>	<u>Annual Increase (Percent)</u>	<u>Percentage of Canada total</u>
1960/61	904	-	36.5
1961/62	913	1.0	34.2
1962/63	975	6.8	34.6
1963/64	1,181	21.1	37.3
1964/65	1,375	16.4	39.1
1965/66	1,627	18.3	40.1
1966/67	1,714	5.3	38.4
1967/68	1,882	9.8	37.1
1968/69	2,101	11.6	36.6
1969/70	2,414	14.9	37.5
1970/71	2,712	12.3	37.6
1971/72	2,914	7.4	37.6
1972/73	3,166	8.6	39.3
1973/74	3,415	7.9	40.7
1974/75	3,549	3.9	42.3
1975/76	3,758	5.9	42.8

Source: Statistics Canada, Fall Enrolment in Universities and
Colleges, No. 81-204, annual.

TABLE VI.11

Enrolment in Law Schools, full-time undergraduate, by university, Ontario, 1959/60 to 1976/77.

<u>Date</u>	<u>Ottawa</u>	<u>Queen's</u>	<u>Toronto</u>	<u>Western Ontario</u>	<u>Windsor</u>	<u>York (Osgoode)^a</u>	<u>total</u>
1959/60	194	59	151	33	-	766	1,203
1960/61	182	63	131	69	-	459	904
1961/62	163	87	161	95	-	407	913
1962/63	165	102	190	118	-	400	975
1963/64	216	113	267	143	-	442	1,181
1964/65	285	143	328	137	-	482	1,375
1965/66	337	204	384	179	-	523	1,627
1966/67	344	226	408	189	-	547	1,714
1967/68	423	270	422	202	-	565	1,882
1968/69	479	300	409	254	68	591	2,101
1969/70	517	346	401	312	141	697	2,414
1970/71	519	365	402	373	260	793	2,712
1971/72	529	388	419	408	318	852	2,914
1972/73							3,166
1973/74							3,415
1974/75							3,549
1975/76							3,758
1976/77							

a Osgoode Hall Law School moved to York University in 1968

Source: Statistics Canada, Fall Enrolment in Universities and Colleges, No. 81-204, annual.

five other law schools have become quite strong institutions with one-third to two-thirds of the enrolment at Osgoode (now incorporated with York University).

The enrolment increases are approximately matched by increases in the number of graduates with a lag of two to three years. Hence the enrolment increase of about 15% in 1969/70 is followed by a graduation increase at the end of the 1970/71 year of 21%, as shown in Table VI.12. At least as important perhaps in its impact on the nature and composition of the supply of legal services is the increase in the percentage of graduates who are female from about 2% or 3% in the mid-1960's to almost 14% one decade later.

Table VI.13 shows the distribution of Ontario lawyers by age, sex, and class of worker. The age distribution shows the effect of growth in the 1960's, with 37% of the male lawyers in the 25-34 age group. The even more rapid growth of female lawyers is reflected in their lower median age of 33, compared with 39 for the males.

The majority of male lawyers (57%) are self-employed, but only 29% of the female lawyers are self-employed. This latter situation is due in part to the higher percentage of female lawyers who are under age 35, where one would expect a higher proportion of salaried lawyers in any case.

The education levels of lawyers is illustrated particularly in Tables VI.14 and VI.15. The former table shows that although females are only 7% of the population with bachelor degrees in law, they constitute 20% of those with masters degrees. Of the total law graduates, 4% have masters degrees in law and less than

TABLE VI.12

Bachelor Degrees in Law Awarded, Ontario, 1960-1974.

<u>Year</u>	<u>Degrees Awarded</u>	<u>Annual Increase (Percent)</u>	<u>Percentage Female</u>
1961	305	-	3.6
1962	260	- 14.8	4.6
1963	249	- 4.2	1.6
1964	298	19.7	3.0
1965	315	5.7	2.2
1966	400	27.0	4.5
1967	469	17.3	4.8
1968	520	10.9	4.2
1969	517	- 0.6	n.a.
1970	600	16.1	n.a.
1971	726	21.0	8.1
1972	777	7.0	7.6
1973	874	12.5	n.a.
1974	934	6.9	13.6

Source: Statistics Canada, Degrees, Diplomas, Certificates
Awarded by Degree-granting Institutions, No. 81-211,
annual; and University Education Growth, 1960/61 and
1971/72, No. 81-559.

TABLE VI.13

Lawyers and Notaries, by age groups and sex and by class of workers, Ontario, 1971

<u>Age</u>	<u>Males</u>		<u>Females</u>	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
Under 25	90	1.4	40	11.6
25-29	1,195	18.4	95	27.5
30-34	1,105	17.0	70	20.3
35-39	1,045	16.1	35	10.1
40-44	915	14.1	35	10.1
45-49	650	10.1	35	10.1
50-54	465	7.2	15	4.3
55-59	340	5.2	15	4.3
60-64	250	3.8	-	-
65-69	185	2.8	10	2.9
70 and over	250	3.8	5	1.5
Total	6,500	100.0	345	100.0
Average age	41		36	
Median age	39		33	
<u>Class of Workers</u>				
Self-employed	3,730	57	100	29
Wage-earner	2,770	43	245	71

Source: Statistics Canada, Labour Force: Occupations, 1971 Census, Vol. III, Pt.2, No. 94-723, Table 8.

TABLE VI.14

Population with Law Degrees^a, by level of study and sex, Ontario, 1973.

<u>Degree</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>total with Law Degrees^b</u>
Bachelor (LLB)	8,445	625	9,070	9,630
Graduate diploma	35	5	40	50
Masters	350	90	445	450
Doctorate	70	10	85	85
Total	8,905	730	9,640	10,210

a Excludes persons who may have a law degree but who subsequently earned a higher degree in a different field of study.

b Includes persons excluded by note (a) above.

Source: Statistics Canada, Highly Qualified Manpower Survey, 1973, Table 1

TABLE VI.15

Percentage of lawyers in each firm who have advanced law degree, and who participated in formal continuing education in 1976, by size and location of firm, Ontario, 1977.

<u>Firm Size</u> (no. of lawyers)	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
<u>Advanced degree</u>			
1	8.4	8.9	8.0
2-4	4.7	2.9	5.8
5-9	4.9	9.2	2.2
10 and over	7.8	8.2	6.1
<u>Continuing Education</u>			
1	44.1	44.9	43.4
2-4	50.1	45.6	52.7
5-9	47.5	39.1	53.0
10 and over	35.9	32.4	50.8

(N = 1876)

Source: Law Firm Survey, Q.II.5.

1% have doctorate degrees. Table VI.15 shows the percentage of lawyers in each firm who were reported to have an advanced degree in law in 1976.

The data from Table VI.1 show that in 1973, only 3% of the lawyers in Ontario had advanced degrees in law. Hence there has either been a sharp increase in the number of lawyers with advanced degrees, from about 175 to at least 770 in a period of only three years, or else there are reporting and/or sampling errors in either or both of the surveys concerned.

The data in Table VI.15 on continuing education may be more reliable than are those for advanced degrees. If so, the participation rates are high - in the order of 40% to 50% except for the large Toronto firms where this drops to 32%. The survey question was quite general, however, and hence a wide range of continuing education activities would prompt a positive answer. Furthermore, the apparently low participation rate at large Toronto firms can be attributed in part to the larger percentage of specialists in those firms who would be engaged in continuous learning on a daily basis in order to remain informed of the current legislation.

The working language of lawyers is important, especially in the context of Canada's current language and national unity issues. Table VI.16 indicates that of 5,135 Canadian-born lawyers in Ontario, 93% reported English as their mother tongue and 3% reported French with the balance reporting other languages. French as a mother tongue is much more common among females than among the males: only 4% of the male population with law degrees, but 20% of the females reported French to be their mother tongue. This

TABLE VI.16

Canadian-Born Population and lawyers and Notaries, with Law Degrees^a, by Mother Tongue, sex and highest law degree earned, Ontario 1973.

<u>Degree</u>	<u>Mother Tongue</u>			<u>Total</u>
	<u>English</u>	<u>French</u>	<u>Other</u>	
Bachelor				
Male	6,130	245	215	6,585
Female	375	35	5	415
Total	6,505	280	220	7,000
Master				
Male	245	20	5	275
Female	10	65	0	80
Total	255	85	5	355
Doctorate				
Male	25	10	0	35
Female	0	0	0	0
Total	25	10	0	35
Total ^b				
Male	6,425	280	225	6,930
Female	385	100	5	490
Total	6,810	380	230	7,420
Percentage	91.8	5.1	3.1	100.0
Lawyers and Notaries (Canadian-Born with Law degrees)				
Total	4,800	145	195	5,135
Percentage	93.5	2.8	3.8	100.0

a excludes law graduates who later earned a higher degree in a different field of study

b includes persons with a graduate diploma or certificate

Source: Statistics Canada, Highly Qualified Manpower Survey, 1973, Tables 12 and 21

rose to over 80% in the case of female masters degree graduates.

Immigration has been an important source of professional labour for Ontario in the post war period, but this is not the case for lawyers. Table VI.17 shows that only 16% of Ontario's lawyers in 1973 were foreign-born; and of these 60% came in the decade 1946 to 1955.

Table VI.18 is useful in that it shows the number of persons who have law degrees but who are not able to practise in Ontario because their degrees were earned outside Canada. First note that 75% of the Ontario population with law degrees earned these in Ontario, and another 8% earned them in other provinces. The United States accounted for 3%, the United Kingdom for another 3%, the remainder of Europe for 7%, and all other countries for the balance. These data show that, depending on the number of advanced degrees that were earned abroad following graduation from a Canadian law school, there are between 11% and 16% of the Canadian population with law degrees who are not able to practise without first returning to law school. While there no doubt are wide discrepancies between the Canadian and foreign law degree programs at the bachelor level, this group represents a potential source of paralegal labour, if indeed they are not already employed in that area.

Although Table VI.18 showed that 10% of the population earned their law degrees in provinces other than Ontario, only about 2% of Ontario's lawyers were first called to the Bar in other provinces (see Table VI.19).

The most important determinant of labour supply in the short run is the labour force participation rate. Table VI.20 indicates that

TABLE VI.17

Lawyers and Notaries with Law Degrees^a, by period of immigration and sex, Ontario, 1973

Sex	Canadian born	before 1946	1946- 1955	1956- 1960	1961 1965	1966- June, 71	Sub- Total	total
Male	4,935 84.1	175	555	115	30	70	940 16.0	5,870
Female	200 83.7	0	30	0	0	5	40 16.7	240
Total	5,135 84.0	175	585	115	30	75	975 16.0	6,110

a excludes persons with a law degree who subsequently earned a higher degree in a different field of study

Source: Statistics Canada, Highly Qualified Manpower Survey, 1973, Table 20

TABLE VI.18

Population with Law Degrees^a, by location where last law degree earned and level of degree, Ontario, 1973

<u>Location</u>	<u>Bachelor</u>		<u>Total^b</u>	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
All countries	9,080	100	9,660	100
Canada ^c	7,915	87.2	8,150	83.3
Nova Scotia	250	2.8	255	2.6
New Brunswick	165	1.8	165	1.7
Quebec	190	2.1	210	2.2
Ontario	7,040	77.5	7,230	74.8
Manitoba	60	0.7	60	0.6
Saskatchewan	65	0.7	65	0.6
Alberta	45	0.5	55	0.6
British Columbia	100	1.1	110	1.1
United States	80	0.9	310	3.2
Europe	860	9.5	955	9.9
United Kingdom	195		270	
Other Europe	665		685	
Asia	190	2.1	210	2.2
Africa	15	0.2	15	0.2
Other	20	0.2	20	0.2

a excludes persons with law degrees who later earned a higher degree in a different field of study

b includes graduate diplomas and certificates

c provinces not listed do not have law schools

Source: Statistics Canada, Highly Qualified Manpower Survey, 1973, Table 15.

TABLE VI.19

Percentage Distribution of Lawyers in Firms by location of first Call to the Bar, by size and location of firm, Ontario, 1977.

<u>Firm Size</u>	<u>Total</u>	<u>Toronto</u>	<u>Other</u>
<u>One lawyer</u>			
Ontario	96	96	95
Rest of Canada	3	2	5
United Kingdom	1	2	0
United States	0	0	0
Other countries	0	0	0
<u>2-4 lawyers</u>			
Ontario	97	97	98
Rest of Canada	1	2	1
United Kingdom	1	1	0
United States	0	0	0
Other countries	1	0	1
<u>5-9 lawyers</u>			
Ontario	98	97	98
Rest of Canada	2	3	1
United Kingdom	0	0	0
United States	0	0	0
Other countries	0	0	0
<u>10+ lawyers</u>			
Ontario	96	95	97
Rest of Canada	2	3	1
United Kingdom	1	2	1
United States	0	0	1
Other countries	0	0	0

Source: Law Firm Survey, Q.II.2.

TABLE VI.20

Population whose Last Highest Earned Qualification is Bachelor Degree in Law, by Labour Force Participation in the last twelve months, by sex, Ontario, 1973.

	Males		Females	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
<u>In Labour force</u>	8,190	97.0	570	91.2
worked full-time ^a	6,790	82.9	365	64.0
worked part-year and/or part-time	1,340	16.4	205	36.0
unemployed	60	0.7	5	0.9
<u>Not in Labour Force</u>	255	3.0	55	8.8
kept house	0	0.0	50	90.9
at school	60	23.5	0	0.0
retired	195	76.5	5	9.1
total	8,445	100.0	625	100.0

a full-time for 40 or more weeks

Source: Statistics Canada, Highly Qualified Manpower Survey, 1973, Table 36.

of the male population in 1973 who had a bachelor degree in law, 97% were in the labour force but 16% worked part-time.

A large number of these will be the articling students who were just beginning or just completing their articling year at the time of the survey. The female participation rate is also quite high - at 91% - although there is a larger percentage of part-time workers, again perhaps reflecting the recent rapid increase in female articling students.

The data on number of weeks worked are presented in Table VI.21 and corroborate some of the evidence in Table VI.20 concerning part-year workers. Of the male lawyers, 75% reported working full-time for at least 49 weeks per year. Among the female lawyers, however, 62% worked at least 49 weeks; another 22% worked 27 to 48 weeks, but only 71% of these were at work full-time.

The final factor determining the supply of labour services by lawyers is the percentage of their time they spend in each field of law; or alternatively, the extent to which they specialize in certain fields. Evidence on this factor is displayed in Table VI.22. The most remarkable observation here is that most lawyers represented in the questionnaire responses spend more than half their time in one field of law, and hence might be regarded in this sense as specialists. This is manifest both in terms of the total number of lawyers (3,619) and the mean number of lawyers by firm size, which compare fairly closely with the means shown in Table VI.5. Since any one lawyer cannot spend more than 50% of his time in more than one field, the data in Table VI.22 (assuming correct reporting) represent the distribution of lawyers in Ontario by field of specialization. Hence, there are

TABLE VI.21

Lawyers and Notaries, by Weeks Worked in 1970, Ontario, 1971

<u>Weeks Worked</u>	<u>Males</u>		<u>Females</u>	
	<u>Total</u>	<u>Full-time (%)^a</u>	<u>Total</u>	<u>Full-time (%)^a</u>
49-52 (% of total)	4,910 74.7	99	240 61.5	92
27-48	1,430	93	85	71
1-26	230	67	70	50
total	6,570	96	390	82

^apercentage of the total in the given weeks-worked category
who worked mainly full-time.

source: Statistics Canada, Labour Force activity: Work Experience, 1971 Census,
Vol. III, Pt. 7, No. 94-782, Table 29.

TABLE VI.22

Mean number of lawyers in each firm who spend more than 50 per cent of time in one field of law, and percentage of these with advanced law degree or who participated in continuing education in 1976, Ontario, 1977.

	Firm Size (no. of lawyers)							Formal continuing Education
					Total		Advanced degrees	
Field of Law	1	2-4	5-9	10+	No.	%	(%)	(%)
Civil litigation	0.1	0.4	1.5	4.2	680	19	3.8	52.0
Criminal litigation	0.1	0.2	0.4	0.5	295	8	3.7	48.3
Corporate/commercial	0.1	0.3	1.3	7.1	664	18	6.5	43.4
Real estate	0.4	0.9	1.4	3.1	1241	34	2.6	42.3
Tax	0.0	0.0	0.1	0.9	74	2	16.2	37.8
Wills, estates	0.1	0.1	0.3	0.9	218	6	3.5	30.8
Family	0.1	0.2	0.2	0.3	193	5	5.2	52.1
Administrative	0.0	0.0	0.1	0.7	56	2	4.9	31.1
Labour relations	0.0	0.0	0.0	0.3	37	1	4.8	26.2
Industrial, intellectual	0.0	0.0	0.1	0.6	47	1	8.5	14.9
Admiralty	0.0	0.0	0.0	0.1	5	0	9.1	0.0
Other	0.0	0.0	0.1	0.1	109	3	4.6	21.1
Total	0.9	2.1	5.6	18.8	3619	100	6.1	33.3

Source: Law Firm Survey, Q.II.6.

de facto 34% of Ontario lawyers who specialize in real estate, 18% in corporate and commercial law, 27% in litigation, and so on. The questions on advanced degrees and continuing education have produced slightly lower percentages than were seen in Table VI.15. This is to be expected since the number of lawyers included in the specialization part of the question accounts for somewhat less than all lawyers in the survey responses.

Table VI.23 indicates the percentage of firms customarily referring matters to lawyers outside the firm who specialize. The data show that even among the solo-lawyer firms only 45% to 50% of the firms would customarily refer matters concerning tax and criminal litigation (two areas generally regarded as being quite "specialized") to other firms. Virtually all of the firms (with the possible exception of small Toronto firms) normally do whatever real estate work comes to them; and a very high percentage of the firms normally do their own work on wills and estates.

This chapter on the supply of labour services has been concerned with lawyers services because there are only meagre data on the supply of other legal personnel. Some evidence is available however on the recent growth of some paralegal occupations in terms of their enrolments as shown in Table VI.24. During the 1970's, the Ontario Colleges of Applied Arts and Technology have established programs for training legal secretaries, law clerks, and law office administrators. Each of the one-year and two-year legal secretary programs have more than doubled their enrolments, to reach an output of about 500 to 600 per year. Law office administrators are graduating at a rate of over 200 per year. The low numbers in the

TABLE VI.23

Percentage of legal firms which customarily refer matters to external specializing lawyers, by size and location of firm, Ontario, 1977.

Field of Law	Toronto				Other			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil litigation	60	43	31	13	52	32	15	27
Criminal litigation	47	40	44	38	45	24	16	27
Corporate/commercial	19	10	11	4	14	3	5	18
Real estate	11	7	3	0	4	1	3	1
Tax	50	56	44	29	46	50	38	46
Wills, estates	13	11	8	0	6	4	3	18
Family	25	13	25	33	23	8	7	9
Administrative	27	22	19	0	28	17	8	0
Labour relations	36	46	56	33	42	41	39	46
Industrial, intellectual	34	44	44	54	38	42	56	55
Admiralty	29	36	44	33	34	36	51	27
Total N = 1912.	N = 472	274	36	24	535	460	61	11

Source: Law Firm Survey, Q. IV.2.

TABLE VI.24

Full-Time Enrolment in Paralegal Programs, by sex, at Ontario Colleges of Applied Arts and Technology, 1970 - 1976.

<u>Program</u>		<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
Secretarial-Legal one year	M	0	1	1	4	2	0	1
	F	65	71	94	160	180	168	190
	T	65	72	95	164	182	168	191
Secretarial Arts-Legal two years	M	1	10	8	5	4	11	2
	F	362	437	619	690	740	769	769
	T	363	447	627	695	744	780	771
Law Clerk one year	M	7	4	1	6	3	1	0
	F	7	3	10	13	9	8	3
	T	14	7	11	19	12	9	3
Legal Office Admin. two years	M	14	30	52	67	55	72	60
	F	33	46	71	159	244	367	360
	T	47	76	123	226	299	439	420
Legal Office Admin. three years	M	-	-	5	12	16	19	17
	F	-	-	11	20	30	44	42
	T	-	-	16	32	46	63	59
Total	M	22	45	67	94	80	103	80
	F	467	557	805	1042	1203	1356	1364
	T	489	602	872	1136	1283	1459	1444

Source: Ontario Colleges Information System, Ministry of Colleges and Universities, Information Resources Branch.

law clerk program are misleading since the data here are full-time enrolments and the law clerk program is normally undertaken on a part-time basis.

4. Salaries, Earnings and Hourly Rates

An empirical study of lawyers' earnings and supply adjustments in the lawyers' market in the United States found that the legal profession had two extended periods of high relative earnings: in the late 1920's and in the late 1960's/early 1970's.³ The reason was the rapid growth in demand for legal services which accompanied the rapid growth of real national income, with a slow supply adjustment in terms of places in law schools.

Satisfactory data for such an analysis in the context of this study are not available, although the enrolment response in the early 1970's suggests that the same phenomenon may be at work in Ontario that Pashigian observed in the study cited. This section deals with the mean levels of lawyers' earnings and salaries at specific times, together with hourly rates charged by lawyers with varying degrees of experience, and the average salaries paid by Ontario law firms to different kinds of legal personnel.

The average 1970 employment income for all male lawyers in Ontario was \$21,992 but the median was only \$18,622, as shown in Table VI.25. A difference this large is unusual for whole populations within occupational classes, and emphasizes the exceptionally high earnings of some lawyers which increase the mean so significantly above the median. Unfortunately the standard census income groups end at

TABLE VI.25

Lawyers and Notaries, by 1970 Employment Income Group, and sex, Ontario, 1971

<u>Employment Income</u>	<u>Males</u>		<u>Females</u>	
	<u>Number</u>	<u>Percentage</u>	<u>Number</u>	<u>Percentage</u>
Under \$2,000	255	3.9	50	13.0
2,000- 3,999	455	6.9	35	9.1
4,000- 5,999	285	4.3	70	18.1
6,000- 7,999	245	3.7	100	26.0
8,000- 9,999	370	5.6	} 125	} 32.5
10,000- 11,999	475	7.2		
12,000- 14,999	600	9.1		
15,000- 19,999	835	12.7		
20,000- 24,999	845	12.9		
25,000- and over	2,210	33.7		
total with employment income	6,565	100.0	385	100.0
Average employment income	\$21,992		\$8,437	
Median employment income	\$18,622		\$7,257	

Source: Statistics Canada, Income of Individuals, 1971 Census,
Vol. III, Pt. 6, No. 94-766, Table 17.

"\$25,000 and over" so it is not possible to differentiate among the 34% who are in this open-ended class. The lawyers at the low-income end of the distribution (almost 25% had incomes under \$10,000) include lawyers who were called to the Bar in 1970 and hence had only part-year incomes, and others who were in practices with low net incomes.

The 1973 income distribution shown in Table VI.26 does make it possible to differentiate further than one could with the 1971 census income. Nevertheless, there are still 26% of the male lawyers in the upper, open-ended class of \$40,000 and over. Note that since these data are only for persons who worked full-time (mainly 40 hours or more per week for 40-52 weeks) the number with incomes less than \$10,000 is only 7.3% of the male lawyers. Again, there is seen to be a wide margin between the mean (average) income of \$30,600 and the median of \$25,800 for full-time workers. More significant perhaps is the much higher incomes of female lawyers in 1973 compared with male lawyers than were seen in Table VI.25 for 1971. This is due to the large percentage of females who reported incomes of less than \$10,000 in 1971, compared with a complete absence of females in this income range in 1973.

Table VI.27 presents data on the average hourly rate charged according to size and location of firm and a lawyer's experience. The unweighted averages for the total response group shows a range from \$46 per hour for lawyers with less than six years experience to \$66 for those with more than ten years. For all firms which bill separately for the time of articling students the hourly rate was in the order of \$20 to \$23. Similarly, there was little variation

TABLE VI.26

Lawyers and Notaries^a, by income group and sex, Ontario, 1973.

Lawyers and Notaries

	<u>Male</u>	<u>Female</u>	<u>Total</u>
Total	6,955	275	7,230
Reported income ^b	5,440	205	5,645
Worked full-time ^c	4,755	165	4,920

Average Total Income

All reporting		
Average	\$ 27,500	\$ 16,700
Median	\$ 23,300	\$ 14,400
Worked full-time		
Average	\$ 30,600	\$ 19,700
Median	\$ 25,800	\$ 16,900

Income Distribution^d

<u>Income Group</u>	<u>Males</u>		<u>Females</u>	
	<u>No.</u>	<u>%</u>	<u>No.</u>	<u>%</u>
less than \$5,000	180	3.8	0	0
5,000 - 9,999	165	3.5	0	0
10,000 - 14,999	585	12.3	60	36.4
15,000 - 19,999	645	13.6	40	24.2
20,000 - 24,999	725	15.2	20	12.1
25,000 - 29,999	485	10.2	10	6.1
30,000 - 39,999	725	15.2	25	15.2
40,000 and more	1,245	26.2	5	3.0
Total	4,755	100	165	100

a includes only those with a degree, but not necessarily a law degree

b includes employment and non-employment income

c mainly 40 hours or more per week for 40-52 weeks

d for persons who worked full-time

Sources: Statistics Canada, Highly Qualified Manpower Survey, 1973,
Tables 18, 28A, 28B.

TABLE VI.27

Law firms' average hourly rates by lawyers' experience, and by
size and location of firms, Ontario, 1977.

<u>Lawyers' Experience</u>			<u>Firm Size (no. of lawyers)</u>			
<u>Total</u>	<u>N</u>	<u>Rate</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10 and over</u>
More than 10 years	931	\$66	\$59	\$68	\$82	\$93
6 to 10 years	509	59	54	59	64	68
Less than 6 years	885	46	45	47	48	48
Articling students	314	21	20	21	22	23

Toronto

More than 10 years	64	72	84	101
6 to 10 years	57	63	66	72
Less than 6 years	47	48	50	48
Articling students	20	20	24	23

Other

More than 10 years	53	65	81	79
6 to 10 years	51	57	63	61
Less than 6 years	44	46	48	48
Articling students	19	21	21	23

Source: Law Firm Survey, Q.V.2

in the hourly rate for lawyers with less than six years experience, which ranged between \$45 and \$50. There is much more variation in the hourly rates charged at the level of six to ten years experience: for Toronto firms this rate rises from \$57 in solo firms to \$72 in the largest firms; in non-Toronto firms the rate is slightly below the Toronto level and again rises with firm size, with the exception of the largest non-Toronto firms.

An increase in firm size makes it possible to practise division and specialization of labour in terms of various fields of law. Initially this may be a matter of concentrating in one area but eventually this can lead to specialization in the sense of acquiring expert status, with associated higher opportunity cost of that lawyer's time. Hence, one should expect to find that increasing firm size is accompanied by increasing hourly rates, as is shown in Table VI.27.

Hourly rates also vary by field of law. These data appear in Table VI.28. (Note that the number of responses for some cells is quite low and hence one should treat the values with caution.) For lawyers with less than six years experience the rates vary from \$48 (for real estate, which is strongly influenced by the small firms) to \$59 for tax matters, which are handled chiefly by the larger Toronto firms. The range of course widens for lawyers with six to ten years experience: from \$54 for wills and estates to \$77 for matters concerning industrial and intellectual property. At the level of more than ten years experience, the range widens further: from \$62 to \$65 for real estate and wills and estates to \$88 for tax matters.

It is also important to note the variation among fields of law in the premium accorded to experience. The increase in the hourly

TABLE VI.28

Law firms' average hourly rates, by lawyers' experience, by
category of legal service, Ontario, 1977.

<u>Category</u>	<u>Lawyers' years of experience</u>					
	<u>More than 10</u>		<u>6-10</u>		<u>Less than 6</u>	
	<u>N</u>	<u>Rate</u>	<u>N</u>	<u>Rate</u>	<u>N</u>	<u>Rate</u>
Civil litigation	129	\$78	70	\$66	131	\$51
Criminal litigation	53	73	52	57	81	48
Corporate, commercial	146	75	74	64	85	52
Real estate	211	62	125	58	187	48
Tax	14	88	11	72	10	59
Wills, estates	64	65	15	54	18	57
Family	35	73	23	63	48	50
Administrative	16	88	5	73	6	56
Labour relations	15	79	10	67	4	54
Industrial property	6	86	7	77	5	50
Admiralty	2	a	2	a	2	a
Other	9	71	16	59	-	-

a - number of respondents too small to publish data.

Source: Law Firm Survey, Q.V.3

rate from the "less than six" to the "more than ten" experience levels is \$36 for industrial property, \$32 for administrative law, and \$29 for tax law - all areas that are usually regarded as quite specialized. Conversely, the experience premium in real estate averages only \$14.

The average starting salaries paid by law firms in 1977 for different kinds of personnel are shown in Table VI.29.⁴ Apart from the sole proprietorships, it can be seen in Table VI.29 that the starting salary paid to junior lawyers in Toronto firms increases with the size of firm: the average salary paid by the larger firms is 9% greater than that paid by the firm of two to four lawyers. This could be either because the largest firms can afford to pay more to attract the best young lawyers (recall the greater per-lawyer revenues in the largest Toronto firms identified in Tables V.7 and V.8) or because the larger firms are able to make more productive use of the young lawyers, or for both reasons. The non-Toronto firms, however, have quite similar starting salaries regardless of firm size.

Among the Toronto firms, the average starting salaries for articling students are relatively constant across firm size, with the exception of the largest firms which pay 12% to 15% more than other Toronto firms. Starting salaries for students in firms outside Toronto are lower by about 15% to 20% than the salaries paid by firms of similar size in Toronto, but the salaries increase with firm size.

Starting salaries for legal secretaries vary relatively little with firm size, but salaries outside Toronto are generally 20% below Toronto salaries.

Paraprofessionals receive the highest starting salaries in the one-lawyer firms, both in and out of Toronto, with salaries

TABLE VI.29

Average starting salaries paid by law firms, by size and location for firms, Ontario, 1977.

		<u>Firm Size (no. of lawyers)</u>			
		<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10 and over</u>
<u>Total</u>	<u>N</u>				
Junior lawyer	496	\$ a	\$ 15,000	\$ 15,300	\$ 16,200
Articling student	398	7,600	7,600	7,600	8,800
Legal secretary	1,226	8,700	8,600	8,800	8,700
Paraprofessional	358	10,000	9,700	10,300	10,800
<u>Toronto</u>					
Junior lawyer		a	15,300	16,700	17,000
Articling student		8,500	8,300	8,500	9,500
Legal secretary		9,800	9,800	10,000	9,500
Paraprofessional		10,200	10,600	11,700	11,400
<u>Other</u>					
Junior lawyer		a	14,800	14,700	14,900
Articling student		6,800	7,200	7,200	7,500
Legal secretary		8,000	7,900	8,300	7,000
Paraprofessional		9,800	9,300	9,600	9,500

Source: Law Firm Survey, Q.V.4.

a Data not available.

being lowest in firms of two to four lawyers and then increasing with firm size. Again, starting salaries outside Toronto for paraprofessionals are 10% to 20% below Toronto salaries for firms of similar size.

TableVI.30 presents data on salaries for the same groups after five years experience. (Again the data on junior lawyers in one-lawyer firms must be disregarded - particularly since the reported salaries decline from starting to five years later.) The patterns emerging here are similar to those seen in TableVI.29, with the following notable differences. Junior lawyers in mid-size firms outside Toronto make greater gains than their Toronto counterparts; junior lawyers in the largest firms both in and out of Toronto each realize the largest gains (of about 90%) over the five years.

The salaries of legal secretaries are increased about 20% to 25% for their five years of experience, with the largest increases going to the secretaries in the largest firms. Similarly, the salaries of paraprofessionals increase by 12% to 30%, with the largest increases again occurring in the largest firms.

TABLE VI.30

Average salaries paid by law firms to employees with five years experience, by size and location of firms, Ontario, 1977.

		<u>Firm Size (no. of lawyers)</u>			
<u>Total</u>	<u>N</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10 and over</u>
Junior lawyer	252	\$ a	\$ 23,300	\$ 24,800	\$ 30,600
Legal secretary	704	10,900	10,700	10,900	11,600
Paraprofessional	166	12,600	11,900	12,800	14,700
<u>Toronto</u>					
Junior lawyer		a	23,700	25,200	32,000
Legal secretary		12,200	12,100	11,800	12,300
Paraprofessional		14,000	12,800	13,600	15,300
<u>Other</u>					
Junior lawyer		a	23,100	24,500	28,000
Legal secretary		10,000	10,000	10,500	10,200
Paraprofessional		11,500	11,600	12,500	13,000

Source: Law Firm Survey, Q.V.5.

a Data not available.

Footnotes

1. Statistics Canada, Occupation by Industry, 1971 Census, SE-1, No. 94-792, Table 2.
2. Robert G. Evans, "Universal Access - The Trojan Horse," in Professions and Public Policy, eds. Michael J. Trebilcock and Philip Slayton (Toronto: University of Toronto Press, 1978).
3. B. Peter Pashigian, "The Market for Lawyers: The Determinants of the Demand for and Supply of Lawyers," p. 80.
4. The answers given to this question by sole practitioners have been disregarded; although one might regard the data as the salary (or net income) the sole practitioner retains for himself, the relatively small number of responses was indicative of a significant group of sole practitioners who felt the question did not apply to them.

VII. Economic Analysis of the Market for Lawyers' Services:
Specialization

1. Specialization of Firms
2. Specialization of Lawyers
3. Comparison
4. Referrals

Footnotes

VII. Specialization

There are two aspects to specialization, firms and individuals, the two not necessarily bearing any constant relationship to each other. While diversity of firm activity is perfectly consistent with complete specialization of lawyers in large firms, it is an impossibility in sole proprietorships and unlikely in small firms. In this chapter data from the survey of legal firms conducted by the Professional Organizations Committee will be examined in terms of specialization of individuals and of firms and an attempt will be made to specify the relationship between the two.

1. Specialization of Firms

It was shown in the chapter on clients that consumers have difficulty locating a lawyer or law firm whose area of expertise matches their type of legal problem. It is therefore important to know if this problem occurs because firms are not specialized or if in fact firms are focusing on specific activities, but such information is not being transmitted to consumers.

On the firm survey respondents were asked to indicate the percentage of billable time accounted for by each of a variety of activities. The average of the highest percentage reported by each firm appears as the top (first) activity in Table VII.1; this will indicate the extent to which firms are specialized in a single activity. The results show that firms spend between 40% and 55% of billable time in one area of law. When these figures are calculated separately for Toronto and other locations, Toronto firms appear much more specialized

TABLE VII.1

Percentage of Billings accounted for by the Top and Top 4 Firm Activities.

<u>Firm Size</u>	<u>TOTAL</u>		<u>TORONTO</u>		<u>OTHER</u>	
	<u>Top</u>	<u>Top 4</u>	<u>Top</u>	<u>Top 4</u>	<u>Top</u>	<u>Top 4</u>
1	55	95	58	96	53	93
2-4	46	90	48	92	45	90
5-9	41	88	49	92	36	85
10+	47	87	48	90	44	81

Source: Firm Questionnaire, Q.IV.1

than firms outside Toronto, 48% to 58% of billings accounted for by one activity in the former location and only 36% to 53% of billings in the latter. Comparing results across firm sizes, it appears that the smaller the firm the larger the percentage of billings accounted for by a single activity. For sole proprietorships over 50% of billings are derived in one activity,¹ while in the largest firms the figures are about ten percentage points lower.

To examine the extent to which firm activity is diversified, the sum of the top four percentages reported in the distribution of billable time question was calculated for each firm. The average value by firm size and location is reported in Table VII.1; the appropriate interpretation of these figures is that a higher percentage connotes less diversification.

Again, sole practitioners show the most specialization - about 95% of the activity of these lawyers is concentrated in four areas of practice. In all Toronto firms, and in small firms in other locations, at least 90% of billable time is spent in four activities while outside Toronto this figure drops to 85% for firms with five to nine lawyers, and to 81% for firms with ten or more lawyers. Generally, the percentages fall as firm size increases. The explanation for greater concentration of practice by small as opposed to large firms lies in the fact that it is really lawyers and not firms that specialize. In sole proprietorships, firm specialization is equivalent to lawyer specialization and, since there is a limit to the variety of activities that can be competently handled by any one lawyer,² small firms tend to limit themselves to a few areas of law. For large firms diversification is achieved through the conglomeration in one entity of a variety of

specialized lawyers;³ the division of labour by specialty enables the firm to offer a wide range of services.

The percentage of billable time spent in the top four firm activities is higher in than outside Toronto. With regard to location, it is more likely in heavily populated areas with a greater number of law firms that each firm will focus on a few activities: there is sufficient demand in any given area of law to permit specialization and plenty of other firms to which matters not handled by the firm can be referred.

Turning to Table VII.2, the percentage of billings accounted for by the top four firm activities is presented by firm size and postal code; in essence, the non-Toronto locations have been broken down into four postal code regions (K,L,N,P). The highest percentages (aside from Toronto) are in region L, the area surrounding Toronto, and the magnitude of the figures there probably reflects the Toronto influence. The percentages in eastern (K) and western (N) Ontario are similar to each other and somewhat lower than those in Toronto. Again, concentration of practice is inversely related to size of firm except in region P in which the percentages are fairly constant across firm size. This result is consistent with the nature of consumer demand in more remote areas. Since it is primarily households and small businesses located in this region⁴ the law firms do not need to be as diversified as their urban counterparts whose clients range from individuals to corporations.

The previous tables indicated the extent to which practice was concentrated in one or four activities without specifying the activities involved. Although most firms appear relatively specialized,

TABLE VII.2

Percentage of Billings Accounted For by the Top 4 Firm Activities.

<u>Firm Size</u>	<u>K</u>	<u>L</u>	<u>M</u>	<u>N</u>	<u>P</u>
1	94	94	96	94	91
2-4	89	90	92	90	88
5-9	85	86	92	83	90
10+	80	87	90	79	--

K: Eastern Ontario

L: Central Ontario

M: Metro Toronto

N: Western Ontario

P: Northern Ontario

Source: Firm Questionnaire, Q.IV.1

the actual areas of law focused on will vary with firm size and location. Tables VII.3, VII.4 and VII.5 respectively, report the number of firms spending more than 30%, 40% and 50% of billable time in an activity.

Looking first at Table VII.3 it is apparent that a large percentage of sole practitioners derive a significant proportion of billings from real estate, 41% of those in Toronto and 66% in other locations. Similarly, for firms with two to five lawyers, real estate is a focus of activity; 44% of firms in Toronto and 60% of firms outside Toronto spend more than 30% of billable time in this specialty. Other results worth noting with regard to small firms are the greater number of firms specializing in litigation in Toronto than in other locations and the reverse geographic trend in wills and estates.

For larger firms, there is a mixture of results. Firms with five to nine lawyers in Toronto are specializing in a variety of activities; 28% in corporate and commercial law, 25% in real estate, and 19% in civil litigation. Firms of the same size outside Toronto do not display the same swing away from real estate and into corporate law: 33% of firms spend more than 30% of billable time in real estate, while in corporate law the figure is only 8%.

The primary area of specialization for the largest Toronto firms is, as expected, corporate and commercial law. It is interesting that firms with ten or more lawyers outside Toronto do not focus on corporate law; rather, 36% of these firms specialize in real estate. It should be noted that the greater number of small than large firms spending more than 30% of billable time in each specialty reflects the much larger proportion of small (than large) firms in the sample

TABLE VII.3

Percentage of Firms spending more than 30% of billable time in an area,
by Location and Size of Firm.

	<u>TORONTO</u>				<u>OTHER</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil Litigation	11	11	19	13	7	7	13	9
Criminal Litigation	15	8	3	4	8	3	0	0
Corporate and Commercial	12	12	28	50	3	4	8	0
Real Estate Transactions	41	44	25	17	66	60	33	36
Tax	1	1	0	0	2	1	0	0
Wills and Administration of Estates	6	2	3	0	9	6	0	0
Family	7	4	0	0	5	1	0	0
Administrative	1	1	0	4	0	0	0	0
Labour Relations	0	1	0	0	0	0	0	0
Industrial and Intellectual Property	1	1	0	0	0	0	2	9
Admiralty	0	0	0	0	0	0	0	0

N=476 N=275 N=36 N=24 N=537 N=462 N=61 N=11

Source: Firm Questionnaire, Q.IV.1

TABLE VII.4

Percentage of Firms spending more than 40% of billable time in an area,
by Location and Size of Firm.

	<u>TORONTO</u>				<u>OTHER</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil Litigation	9	6	14	4	4	3	3	9
Criminal Litigation	12	3	3	4	4	1	0	0
Corporate and Commercial	9	7	11	46	2	1	0	0
Real Estate Transactions	32	25	17	8	48	39	18	27
Tax	1	0	0	0	2	1	0	0
Wills and Administration of Estates	3	1	3	0	4	1	0	0
Family	4	3	0	0	3	0	0	0.
Administrative	0	1	0	4	0	0	0	0
Labour Relations	0	1	0	0	0	0	0	0
Industrial and Intellectual Property	1	1	0	0	0	0	2	9
Admiralty	0	0	0	0	0	0	0	0

N=476 N=275 N=36 N=24 N=537 N=462 N=61 N=11

Source: Firm Questionnaire, Q.IV.1

TABLE VII.5

Percentage of Firms spending more than 50% of billable time in an area,
by Location and Size of Firm.

	<u>TORONTO</u>				<u>OTHER</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil Litigation	5	3	11	4	3	2	2	0
Criminal Litigation	11	2	3	0	3	0	0	0
Corporate and Commercial	6	4	8	21	1	0	0	0
Real Estate Transactions	21	14	11	8	29	20	5	9
Tax	1	0	0	0	1	0	0	0
Wills and Administration of Estates	1	0	0	0	1	1	0	0
Family	3	2	0	0	1	0	0	0
Administrative	0	1	0	0	0	0	0	0
Labour Relations	0	1	0	0	0	0	0	0
Industrial and Intellectual Property	1	1	0	0	0	0	2	9
Admiralty	0	0	0	0	0	0	0	0

N=476 N=275 N=36 N=24 N=537 N=462 N=61 N=11

Source: Firm Questionnaire, Q.IV.1

and the greater diversity of activity of large firms. Thus, the fact that few large firms report more than 30% of billable time in several activities does not imply an insignificant amount of work in these areas of law; for these firms, their diversification renders it unlikely that a large percentage of billable time will be spent in any one area.

Using 40% of billable time as the selection criterion (see Table VII.4) lowers the number of firms in each specialty, but the same general results emerge. Again, real estate is the most frequently indicated specialty, except in the largest Toronto firms. Almost half of these firms derive over 40% of billable time in corporate and commercial law.

To construct Table VII.5 an even stricter definition of specialization was employed; over 50% of billable time in an activity was required for a firm to be considered specialized. Looking at sole proprietorships both in and outside Toronto, it can be seen that almost half these firms are deriving more than 50% of their billings from a single activity. The most common specialty is real estate, although quite a few firms are focusing on litigation, corporate and commercial law and to a lesser extent family and estates. In fact there are firms in just about every specialty. As firm size increases, the number of different areas of law specialized in decreases; indeed, for the two larger firm size categories the number of firms spending more than 50% of billable time in an activity is zero in over half the specialties. Generally speaking, Toronto firms are more specialized than firms of comparable size in other locations. This accords with the previous evidence of greater diversification by non-Toronto firms.

2. Specialization of Lawyers

The most interesting result emerging from the data on lawyer specialization is the overwhelming tendency for lawyers to spend more than 50% of their billable time in a single activity. For the overall sample, 84% of lawyers reported that they concentrate in a single area of law. Looking at Table VII.6, it is evident that the specialties practised vary significantly with respect to the size of the firm in which the lawyer is employed. Sole practitioners and firms with two to four lawyers are most frequently specialized in real estate. Significant numbers of lawyers in these firm size categories are also specialized in litigation, corporate and commercial law and to a lesser extent family and estates. In larger firms lawyers are primarily specialized in civil litigation, corporate and commercial law and real estate.

Looking at specialties across firm sizes, it appears that the percentage of lawyers specializing in civil litigation, corporate and commercial law and tax is positively associated with size of firm, while an inverse relationship with firm size applies for criminal litigation, real estate, wills and estates, and family. These differences in specialization by lawyers can be explained with reference to the variations in clientele by size of firm. Although household and small businesses are found as clients of firms of every size, large corporations for numerous reasons⁵ are primarily serviced by large law firms. Since the preponderance of corporate clients increases with firm size, it is not surprising to find lawyers in large firms specialized in civil litigation, corporate and commercial and tax. Similarly, the larger proportion of firm activity accounted for by household and smaller

TABLE VII.6

Percentage of Lawyers spending more than 50% of their billable time in an activity, by size of firm.

	<u>Total</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil Litigation	16	8	16	24	21
Criminal Litigation	7	9	8	6	2
Corporate and Commercial	16	9	11	20	36
Real Estate Transactions	30	38	33	23	16
Tax	2	1	1	2	5
Wills and Administration of Estates	5	5	6	5	4
Family	5	5	6	3	1
Administrative	1	1	1	2	3
Labour Relations	1	0	1	1	2
Industrial and Intellectual Property	1	1	1	1	3
Admiralty	0	0	0	0	0
	N=4192	N=1013	N=1678	N=608	N=693

Source: Firm Questionnaire, Q.II.6

business clients in small firms explains the pattern of specialization by lawyers found there.⁶

In Table VII.7, specialization by lawyers is examined separately in Toronto and other locations; generally, lawyers in Toronto firms appear more specialized than those in firms of comparable size outside Toronto. The most striking result is the much larger percentage of lawyers specializing in corporate and commercial law in Toronto than in other locations for each firm size. Not only are most of the large corporations located in Toronto, accounting for the high percentages of lawyers specializing in tax, civil litigation and corporate law in the largest Toronto firms, but it also appears that a majority of smaller businesses are found in Toronto, or are serviced by Toronto firms of all sizes.⁷

Another interesting result is the higher percentage of lawyers specializing in real estate and estates in locations outside as opposed to within Toronto. This difference is especially prominent in the smaller firm size categories. Given the relative lack of business activity outside Toronto just noted, the clientele of firms located there is likely to be more heavily comprised of households than is the case for firms of the same size located in Toronto,⁸ hence the observed emphasis in specialties. It should also be noted that the large percentage of lawyers in industrial and intellectual property in large firms outside Toronto is a consequence of a few Ottawa firms in the sample who specialize in that area.

Finally, with respect to specialization by lawyers, it may be useful to distinguish non-Toronto locations on the basis of the size of city or town (by population) in which the firm is located.

TABLE VII.7

Percentage of Lawyers spending more than 50% of their billable time in an activity, by location and size of firm.

	<u>TORONTO</u>				<u>OTHER</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil Litigation	10	16	28	22	7	16	21	16
Criminal Litigation	13	8	6	3	7	8	6	2
Corporate and Commercial	14	15	26	40	5	8	16	20
Real Estate Transactions	32	29	24	15	43	35	21	17
Tax	1	1	2	5	2	1	2	2
Wills and Administration of Estates	4	4	6	4	6	6	5	5
Family	6	7	2	1	4	6	4	2
Administrative	1	1	2	4	1	1	1	2
Labour Relations	0	1	0	2	0	1	1	2
Industrial and Intellectual Property	1	0	0	1	0	1	2	12
Admiralty	0	0	0	1	0	1	0	0

N=476 N=693 N=238 N=561 N=537 N=1185 N=370 N=132

Source: Firm Questionnaire: Q.II.6

This categorization of firms will indicate any tendency for differential incidence of specialization with respect to the degree of urbanization. The five population ranges established were: less than 5,000; 5,000-30,000; 30,001-100,000; 100,001-500,000; and 500,001 or more. Given that Toronto is the only Ontario city with a population exceeding 500,000, the last category corresponds to Toronto. The first two categories were aggregated for purposes of analysis owing to the relatively small number of firms, especially larger ones, in towns of these sizes. The distribution of firms by size of town and size of firm is shown in Table VII.8. Note that there are no firms with more than ten lawyers in centres with populations below 30,000.

Specialization by lawyers, accounting for the population of the city in which the firm is located, as well as firm size, is reported in Table VII.9. The results confirm the main tendencies noted previously, specifically increasing specialization in corporate and commercial law, and to a lesser extent civil litigation as town size increases, and decreasing emphasis on real estate. With regard to the smallest town size category, real estate is by far the main specialty for lawyers in sole proprietorships and firms with two to four lawyers. Second in importance is wills and estates for sole practitioners and civil litigation for lawyers in two to four man firms. Lawyers in firms with between five and nine lawyers specialize primarily in civil litigation and real estate.

Turning to towns with populations of 30,000-100,000, the most significant changes in lawyer specialization relate to increasing numbers of lawyers in corporate and commercial law, family law and litigation,

TABLE VII.8

Distribution of firms by size of firm and size of town.

Size of firm:	1		2-4		5-9		10+	
	No.	%	No.	%	No.	%	No.	%
<u>Size of town</u>								
Less than 30,000	172	16.6	155	20.4	8	13.7	0	0
30,001 - 100,000	148	14.3	135	17.7	21	18.0	3	8.3
100,001 - 500,000	245	23.6	189	24.8	35	30.2	7	19.4
500,001 or more	473	45.6	282	37.1	35	38.1	26	72.2

Source: Firm Questionnaire, Q.I.2

TABLE VII.9

Percentage of Lawyers spending more than 50% of their billable time in an activity, by size of firm, and size of town in which firm is located.

Size of town:	Less than 30,000				30,001 - 100,000				100,001 - 500,000				500,001 or more			
Size of firm:	1	2-4	5-9	10+	1	2-4	5-9	10+	1	2-4	5-9	10+	1	2-4	5-9	10+
<u>Specialty</u>																
Civil Litigation	3	14	32	-	8	16	22	22	9	18	19	14	9	17	25	22
Criminal Litigation	6	5	5	-	8	7	9	3	7	9	4	1	13	9	6	3
Corporate and Commercial	3	3	2	-	7	10	22	19	6	10	15	18	14	15	27	39
Real Estate Transactions	53	37	25	-	44	35	20	19	39	32	18	15	31	29	27	15
Tax	3	0	0	-	1	1	3	3	2	1	1	1	1	1	2	5
Wills and Administration of Estates	7	8	5	-	7	5	6	5	4	6	5	5	5	5	6	4
Family	2	3	0	-	5	4	6	3	4	9	4	1	6	7	2	1
Administrative	0	0	0	-	1	2	2	3	1	1	1	1	1	1	2	4
Labour Relations	0	1	0	-	0	1	1	0	0	1	1	2	0	1	0	2
Industrial and Intellectual Property	0	0	0	-	1	1	2	0	0	1	3	18	1	1	0	1
Admiralty	0	0	0	-	0	0	1	0	0	1	0	0	0	0	0	1
N=	172	401	44	-	148	341	116	37	245	492	227	85	473	705	232	590

Source: Firm Questionnaire, Q.I.2, II.6

and a decrease in lawyers specializing in real estate. This trend continues, as town size increases, for lawyers in the two smaller firm size categories. In the larger firms however, the percentage of lawyers specializing in criminal litigation and family law decreases, the primary increase in lawyer specialization occurring in corporate and commercial law.

In the largest town size category, that is Toronto, lawyers in the smaller firms are specialized primarily in real estate and to a lesser extent in corporate and commercial law and the two types of litigation, while lawyers in the larger firms are specializing most in corporate and commercial law and secondarily in real estate and civil litigation.

Finally, it should be noted that, whereas the percentage of lawyers specializing in wills and estates remains roughly constant across town size, the relative importance of wills as an area of lawyer specialization declines as town size increases.

3. Comparison

It seems clear that specialization by lawyers is the vehicle for concentration of practice by firms; however, the relationship between specialization by firms and by lawyers varies with firm size. Although virtually all sole practitioners indicate an area in which they spend more than 50% of billable time, it is not the case that these lawyers do not practise in other areas of law. The data on concentration of practice indicated that 95% of billable time in sole proprietorships was accounted for by four activities, implying that these lawyers derive

a significant amount of billings outside their specialty. In larger firms, on the other hand, there is both greater diversification of firm activity and more complete specialization of lawyers within firms. With more lawyers on staff, each lawyer can focus on a specific area of law without jeopardizing the ability of the firm to offer a wide range of services.

4. Referrals

One of the issues relevant to specialization is the extent to which firms are handling matters in areas of law in which they have little expertise. In other words, is it necessary to certify specialists in order to ensure that only qualified practitioners take on cases in any given area of law? Table VII.10 examines the incidence of referrals by activity for firms deriving less than 10% of billable time in an area of law.⁹

The results show a relatively high percentage of firms referring matters in litigation and tax, and few referrals in corporate and commercial, real estate, family, and especially wills and estates. The areas of law in which the percentage of firm referrals are lower are ones for which general legal training may be sufficient. Litigation and tax, on the other hand, require fairly specialized skills or knowledge which the average lawyer would not possess, hence the higher percentage of referrals. The percentages in the latter four areas of law should not be given much credibility; the lack of market activity in these specialties implies that many firms (especially small ones) would not bother indicating that they refer matters in these activities

TABLE VII.10

Percentage of Firms referring matters by field of activity.*

Matter:	<u>TOTAL</u>				<u>TORONTO</u>				<u>OTHER</u>			
	1	2-4	5-9	10+	1	2-4	5-9	10+	1	2-4	5-9	10+
Civil Litigation	76	67	60	43	81	80	70	50	72	58	40	33
Criminal Litigation	70	49	40	42	70	59	60	42	70	41	42	43
Corporate and Commercial	29	11	27	50	36	25	67	50 (2)	23	4	13	50 (2)
Real Estate Transactions	38	26	33	20	43	33	33	0	26	7	33	100 (1)
Tax	50	54	44	40	52	59	47	35	49	51	42	50
Wills and Administration of Estates	15	9	10	4	19	15	13	0	11	3	7	17
Family	35	16	19	30	36	22	33	35	34	13	10	14
Administrative	28	20	14	0	28	24	23	0	29	17	10	0
Labour Relations	40	44	49	38	37	47	63	35	42	42	41	44
Industrial and Intellectual Property	37	43	52	61	35	45	46	57	38	42	56	75
Admiralty	32	36	50	33	30	36	49	35	34	36	50	30

*for firms deriving less than ten per cent of billings in a particular activity.

Note: Some cells may only have one or two firms in them.

Source: Firm Questionnaire, Q.IV.2

since they would be unlikely to encounter such cases.

Generally, the percentage of referrals is lower for small and medium-sized firms in locations other than Toronto especially in corporate and commercial law, real estate and wills. This result is consistent with the evidence of greater diversification of activity by non-Toronto firms.¹⁰ For corporate and commercial law, the low percentage of firms referring may indicate that the nature of the work outside Toronto is such that any firm can perform the tasks involved (e.g. an incorporation) or that the factor cited previously with respect to administrative, labour, industrial property, and admiralty law¹¹ is operating in this specialty.

The data also indicate that the percentage of referrals is inversely associated with firm size. As noted previously,¹² the wide range of services offered by large firms implies that a small percentage of billings in an activity may be consistent with highly specialized lawyers within the firm, while in small firms the areas in which practice is concentrated more closely match the specialties of the lawyers within them. As such in activities in which less than 10% of billings are derived, one would expect more referrals by smaller firms than larger ones.

Footnotes

1. The implication is that lawyers practising on their own are highly specialized.
2. As evidenced by the high degree of lawyer specialization, infra, Chapter VII .2, p.155.
3. Infra, pp.147-148.
4. Infra, Chapter IX.2, p.188.
5. Infra, Chapter IX.3, pp.191-192, for an explanation of the association between large corporations and larger firms.
6. For a fuller treatment of household and small business clients, see infra, Chapter IX.4, pp.196-199.
7. See Chapter IX.4, Table IX.2, which shows the much higher percentage of business clients in Toronto (29%) than in other locations (17%-21%).
8. Ibid., Table IX.2, which shows the lower percentage of individual clients in Toronto (55%) than in other postal code regions (61%-65%).
9. Relatively little billable time derived in an activity is the best available proxy for lack of expertise.
10. Supra, pp.145-148.
11. That is, non-reporting of referrals due to a lack of cases encountered.
12. Supra, pp.145-148.

VIII. Economic Analysis of the Market for Lawyers' Services:
Concentration

1. Specialty
2. Type of Client
3. Location
4. Client Type and Location
5. Specialty and Location

Conclusion

Footnotes

VIII. Concentration

According to David Stager's description of the suppliers of lawyers' services, law firms are differentiated on the basis of location and size of firm.¹ The range of services offered, the locus of a firm's activity and the type of client served all vary to some extent with respect to the characteristics mentioned above. More specifically,

"for firms of less than 10 lawyers, whether in or outside Toronto, about 85 to 90 per cent of the clients come from their own counties or districts, with another 10 or 11 per cent from outside that area.

...The larger firms have a much larger percentage of non-Ontario clients (12-13 per cent), who would include national and multinational corporations doing business in Ontario. Similarly, the Toronto firms have a larger share of clients outside Toronto than is the case for the smaller Toronto firms."²

There are also,

"major differences in type of clients between the smaller firms (of less than 5 lawyers) and the larger firms. The former count businesses and other organizations as only 20 to 25 per cent of their clients, while the largest firms report that this group represents 63 per cent of their clients. There is also notable variation between the Toronto and non-Toronto firms of similar size in the composition of their clients. For the small Toronto firms businesses represent 24 to 32 per cent of their clients, but businesses are only 17 to 20 per cent of the clients of the non-Toronto small firms. The largest Toronto firms have public corporations as 21 per cent of their clients, but these are only 7 per cent of the clients of the large non-Toronto firms."³

It should be noted for both of these questions (that is, location and type of client) that law firms were asked to indicate the percentage of clients in each category. Unfortunately, the wording of the question did not specify whether responses should be calculated

as a fraction of the number of clients or of total billings. Since the latter is more likely to be representative of the distribution of firm activity, respondents probably reported on this basis. It will, therefore, be assumed for the remainder of this report that the percentages reflect the value of service provided in each category, although we cannot be sure that this was the intent of the respondents.

In the context of specialization David Stager has noted that,

"the nature of a firm's clients is a major determinant of the legal services a firm will be asked to supply. For the small firms real estate represents 32 per cent (for Toronto firms) to 42 per cent (non-Toronto firms) of their billable time, whereas for the largest firms in Toronto real estate services account for only 21 per cent of their time. The major activity for these firms (35 per cent of their time) is in corporate and commercial law. This coincides with the relatively greater importance of businesses (62 per cent of the total) among the clients of the larger Toronto firms."⁴

These variations in areas of practice, type of client, and locus of activity by size and location of firms are evidence that the suppliers of lawyers' services are not homogeneous. The identification of these market segments suggests that the potential set of suppliers for any consumer is not the entire population of Ontario law firms. It is therefore important to determine the consequences on market structure and performance of these self-imposed restrictions on firm activity. It will be seen that, despite the apparent lack of similarity of service characteristics among firms of different sizes, there is sufficient overlap to ensure a low level of concentration and a large number of suppliers in most segments.

To measure market concentration some indicator of firm output is required. Unfortunately, billings or revenue data are not available from the survey of firms - manpower figures were therefore

used to construct a representative output measure.

The data on earnings from the firm survey indicate that professional salaries are approximately double those received by auxiliary personnel.⁵ Assuming that these earnings figures represent the relative productivities of the two manpower categories, the size measure for each firm was calculated as a weighted sum of professional (weight of two) and non-professional (weight of one) manpower. The distribution of this output measure for the entire sample is given in Table VIII.1.⁶

Using a four-firm concentration ratio as a measure of market structure, the Ontario market is highly unconcentrated; only 5% of total size (as a proxy for output) is accounted for by the four largest firms. With regard to the market segments that have been identified, concentration ratios were calculated for specialties, client types and firm locations. In most cases, low levels of concentration were found.

1. Specialty

The lawyer selection process which emerged from the description of clients involved an initial search for lawyers with expertise in the requisite area of law, followed by a comparison among these lawyers with regard to various other attributes. In other words, clients at the outset limit their range of choice to lawyers whose specialty matches the nature of their legal problem; other lawyer characteristics become decision criteria once the alternatives have been selected. Similarly, the firm survey data indicate that firms limit their range of activities. This evidence suggests that specialties form one set

TABLE VIII.1

Distribution of Firm Size Measures.

Number of Lawyers in the Firm:	mean	2.2
	minimum	1
	maximum	77
	sample size	1944

Constructed Firm Size Measure:	mean	8.8
	minimum	2
	maximum	314
	sample size	1943

of boundaries which circumscribe competition among law firms. It is, therefore, of interest to determine the market structure within each area of practice.

Table VIII.2 indicates the concentration ratios by specialty.⁷ The segments are indeed unconcentrated indicating that, for most specialties, consumers have a vast number of law firms from which to choose. This result is consistent with the previous evidence of variations in areas of practice by size of firm - despite the differences in emphasis of specialties across firm sizes, there is significant activity in most specialties in each firm size category.

The highest concentration measures obtain in the categories of administrative law, labour relations, industrial property and admiralty law, the ratios in the latter two indicating an oligopolistic market structure. The results are not surprising given the percentage distribution of billable time by activity for Ontario firms⁸ - there is a negligible amount of billings derived market-wide in each of these four activities. Moreover, each activity encompasses a fairly specialized body of law with which the average lawyer would not be familiar. Thus, the observed market concentration in these activities is not a consequence of supply-side market failure; rather, the limited demand and the specialized knowledge requirements render the number of suppliers small.

2. Type of Client

Concentration by type of client is reported in Table VIII.3. For client types other than public corporations, concentration ratios are negligible indicating that firms of all sizes are potential

TABLE VIII.2

Concentration Ratios by Specialty.*

	<u>4-firm</u>	<u>8-firm</u>
Civil Litigation	8	12
Criminal Litigation	7	10
Corporate and Commercial	15	23
Real Estate Transactions	3	5
Tax	15	23
Wills and Administration of Estates	3	5
Family	4	6
Administrative	30	41
Labour Relations	26	42
Industrial and Intellectual Property	66	82
Admiralty	66	90

*weighted by activity in the field.

TABLE VIII.3

Concentration Ratios by Type of Client.*

	<u>4-firm</u>	<u>8-firm</u>
Public corporations	40	47
Non-public corporations and unincorporated businesses (Include sole proprietorships and partnerships)	6	10
Legal aid recipients	5	8
Other individual clients	3	5
Government and non-profit institutions	10	16

*weighted by percentage of clients in each category.

providers of service to them. Again, this is consistent with the differential emphasis in type of client across firm size categories noted previously. For example, although small firms on average report more individual clients than do large firms, individual clients on average account for 33% of service provided by large firms, certainly a significant portion of household demand. Only the corporate client sector is concentrated; this accords with the previous evidence of a matching between the largest firms and the largest clients. It is interesting that, despite the concentration in service provision to corporate clients, the corporate and commercial law specialty is competitive. There is a wide range of activity in this field performed by smaller firms; thus, it is only corporate and commercial law services provided to large corporate clients which are dominated by the large firms.

3. Location

Despite the variations in client location for firms of different sizes, the vast majority of firms reported that most clients were located in their own county (see TableVIII.4). The restriction of activity to a limited geographical area, and consequent lack of competition from Ontario firms in other counties might be expected to have adverse consequences on market concentration. Table VIII.5 indicates concentration by county. Except for a few local monopolies or oligopolies, the existing geographic boundaries of firm activity do not unduly limit the number of suppliers. The exceptions probably reflect demand limitations in small isolated communities. To the

TABLE VIII.4

Percentage Distribution of Location of client by
postal code region.

	<u>K</u>	<u>L</u>	<u>M</u>	<u>N</u>	<u>P</u>
Your own county or district (if not Metro Toronto)	85	84	0	86	87
Metro Toronto	5	5	88	3	4
Rest of Ontario	7	10	9	10	7
Outside Ontario	3	1	3	1	2

K: Eastern Ontario

L: Central Ontario

M: Metro Toronto

N: Western Ontario

P: Northern Ontario

Source: Firm Questionnaire, QI.1, IV.3

TABLE VIII.5

Districts and Counties in Ontario. 4-Firm Concentration Ratios.

<u>County or District</u>	<u>No.</u>	<u>4-Firm Ratio</u>	<u>County or District</u>	<u>No.</u>	<u>4-Firm Ratio</u>
Algoma	19	56	Niagara	69	21
Brant	19	48	Nipissing	12	57
Bruce	8	69	Northumberland	14	51
Cochrane	12	59	Ottawa	116	13
Dufferin	9	64	Oxford	14	55
Durham	40	20	Parry Sound	4	100
Elgin	13	66	Peel	51	25
Essex	55	31	Perth	5	95
Frontenac	38	30	Peterborough	18	57
Grey	16	63	Prescott-Russell	3	100
Haldimand-Norfolk	13	47	Prince Edward	4	100
Haliburton	1	100	Rainy River	5	90
Halton	47	24	Renfrew	12	54
Hamilton-Wentworth	124	12	Simcoe	43	29
Hastings	22	38	Stormont-Dundas- Glengarry	12	49
Huron	5	96	Sudbury Region	11	62
Kenora	7	81	Sudbury District	7	77
Kent	18	41	Thunder Bay	15	56
Lambton	23	37	Timiskaming	9	75
Lanark	7	76	Toronto & York	831	12
Leeds & Grenville	7	96	Victoria	9	68
Lennox & Addington	5	96	Waterloo	68	30
Manitoulin	1	100	Wellington	19	36
Middlesex	56	30			
Muskoka	9	79			

Source: Law Firm Survey, Q.I.1

extent that firms do have clients in Ontario outside their own county, it is useful to examine concentration within larger geographic areas. Widening the locus of activity for firms should lower concentration ratios - indeed, the effect on market structure of aggregating counties to correspond to the five postal code regions in Ontario is generally to reduce concentration (see Table VIII.6).

Recognizing that law firms limit the locus of their activity, market concentration by specialty and type of client was examined separately in each postal code region.⁹

4. Client Type and Location

Concentration ratios were derived for the various client types within each of the postal code regions (see Table VIII.7). The results confirm the low levels of concentration for all client types except public corporations. Indeed, 57% of the service to corporate clients of Toronto-based firms is provided by the four largest firms there. This is clearly an oligopolistic segment of the market. Relatively high percentages were also found for the corporate client sectors in the other geographic regions. In addition, the government client sector, though still competitive, is more concentrated than all other client sectors (except of course the corporate clients). Again, the tendency emerges for the larger client types to be associated with the larger firms. Thus, although firms operate primarily within confined geographic boundaries, the number and variety of suppliers to all but corporate clients is large.

TABLE VIII.6

Concentration Ratios by Postal Code.

	<u>4-firm</u>	<u>8-firm</u>
Ontario	5	8
Eastern Ontario (K)	6	11
Central Ontario (L)	6	10
Metro Toronto (M)	12	19
Western Ontario (N)	9	15
Northern Ontario (P)	14	24

TABLE VIII.7

Concentration Ratios by Type of Client and Location of Firm.

	<u>4-firm</u>				
	<u>K</u>	<u>L</u>	<u>M</u>	<u>N</u>	<u>P</u>
Public corporations	28	28	57	42	45
Non-public corporations and unincorporated businesses (Include sole proprietorships and partnerships)	21	12	11	21	39
Legal aid recipients	15	12	10	11	22
Other individual clients	5	7	8	9	12
Government and non-profit institutions	28	30	24	26	36

K: Eastern Ontario

L: Central Ontario

M: Metro Toronto

N: Western Ontario

P: Northern Ontario

5. Specialty and Location

The findings from the firm survey indicate that firms limit their range and locus of activity, but serve a variety of household and business clients. Similarly, consumers search within their locale for a lawyer or law firm with appropriate expertise. Therefore location and specialty emerge as the characteristics relevant to defining market segments - concentration ratios were calculated by specialty in each of the postal code regions.

The results seen in Table VIII.8, again show high concentration in administrative, labour relations, industrial property and admiralty law. Tax also becomes oligopolistic when the geographic boundaries of the market are narrowed. The concentration in the remaining specialties is still low despite the overall increase in concentration ratios due to the narrower market definition.

The northern Ontario ratios are consistently higher than those for the other geographic regions, reflecting both the relative isolation of this market segment from competition from firms located elsewhere in Ontario, and the demand limitation in this less-populated area. Indeed, looking at Table VIII.9, only 6% of the firms in the sample are located in northern Ontario, and none of these are in the largest firm size category.

Conclusion

The examination of concentration has indicated a few market segments which do not display competitive supply characteristics. The relevant segments are:

TABLE VIII.8

Concentration Ratios by Specialty and Location of Firm.*

	<u>4-firm</u>				
	<u>K</u>	<u>L</u>	<u>M</u>	<u>N</u>	<u>P</u>
Civil Litigation	11	14	16	13	23
Criminal Litigation	16	8	15	13	18
Corporate and Commercial	11	9	26	13	31
Real Estate Transactions	5	6	8	10	15
Tax	37	22	30	33	70
Wills and Administration of Estates	10	8	9	9	18
Family	6	9	10	10	19
Administrative	62	30	50	40	55
Labour Relations	66	88	45	72	79
Industrial and Intellectual Property	95	59	67	57	100
Admiralty	100	100	90	100	100

K: Eastern Ontario

L: Central Ontario

M: Metro Toronto

N: Western Ontario

P: Northern Ontario

* weighted by activity in the field.

TABLE VIII.9

Distribution of Firms by Postal Code and Size of Firm.

<u>Location</u>	<u>Firm Size</u>				
	1	2-4	5-9	10+	
Eastern Ontario (K)	147	136	17	3	303
Central Ontario (L)	172	145	17	2	336
Metro Toronto (M)	476	275	36	24	811
Western Ontario (N)	172	124	21	6	323
Northern Ontario (P)	46	57	6	0	109
	1013	737	97	35	= 1882

Source: Firm Questionnaire, Q.I.1

- (1) public corporations, that is, large corporate clients;
- (2) the specialties of administrative, labour relations, industrial property and admiralty law, and to a lesser extent tax, that is, specialized legal services; and
- (3) northern Ontario locations, that is, remote geographical areas.

For these segments, the number of suppliers is small and/or service provision is dominated by a few firms. What will follow is an explanation of the development and continued existence of these concentrated sub-markets, an analysis of efficiency and consumer welfare within them, and an evaluation of the potential effects of alternative policy proposals on market structure and performance in these segments.

Footnotes

1. Supra, pp.83-91.
2. Supra, p.83.
3. Supra, p.86.
4. Supra, p.86.
5. Starting salaries and salaries for those with five years experience.
6. The billings of firms will be under or over estimated in this measure to the extent that variations in billing rates exist for lawyers across seniority levels, firm size and firm location. Adjustment for each of these factors would be extremely cumbersome and would not be likely to change the general nature of the results.
7. The results of the four-firm concentration ratios will be referred to in the text. Eight-firm concentration ratios are presented to demonstrate the consistency of the results.
8. Supra, Table V.11, p.88.
9. A county breakdown would have been too unwieldy and would have rendered many of the cells too small for meaningful analysis.

IX. Economic Analysis of the Market for Lawyers' Services:
Analysis of Segments

1. Specialized Legal Services
2. Remote Locations
3. Corporate Clients
4. Household and Small Business Clients
 - (a) Decision to Consult
 - (b) The Search and Selection Process
 - (i) Office Information
 - (ii) Biographical Information
 - (iii) Fee Information
 - (c) Evaluation

Footnotes

IX. Analysis of Segments

In addition to the three oligopolistic segments on the supply-side singled out for analysis, the description of clients indicated a major demand-side information problem among household and small business clients. It was demonstrated that, although consumers range in knowledgeability and sophistication along a continuum, the amount of knowledge generally increasing with 'size' of client, there is a rough dichotomy between household and business clients in terms of frequency of experience with lawyers and levels of information. In addition, smaller business clients resemble more closely individual or household consumers than they do their large business counterparts. For the purposes of this analysis therefore, small businesses and households will be treated as the client group suffering from a lack of information, while the remaining business clients will be incorporated into the corporate client sector, already earmarked for analysis due to supply-side imperfections. Thus, the segments to be discussed are:

- (1) Specialized legal services
- (2) Remote locations
- (3) Corporate clients
- (4) Household and small business clients

1. Specialized Legal Services

The four specialties of labour relations, administrative, industrial property and admiralty law and, to a lesser extent, tax are characterized by a low level of market demand, a specialized body of law, and a high level of market concentration.

The latter result, that is, concentration, is easily explained

with reference to the two former conditions, that is, limited demand and specialized knowledge requirements. Given the limited opportunities for practise in these segments, it would be inefficient and unnecessarily costly for all lawyers to acquire the expertise to handle the odd case encountered. Rather, a few law firms become more specialized, hence the limited number of suppliers. Thus, it is not clear from a public policy perspective that this concentration is inimical to consumer welfare. Not only is it likely that consumers are receiving high quality service from specialized professionals, but also that they are being provided with these services at reasonable prices. Prices may be somewhat higher in these than other sectors to reflect the substantial capital investment in the form of knowledge.¹ However, the accumulated expertise vested in the specialized lawyers implies more efficient service provision than could be supplied by less knowledgeable colleagues. It is, therefore, unlikely that total charges to clients are generating an above normal rate of return.

The only problem associated with this market structure is the difficulty of entry into these segments. The established firms in these specialties are protected from competition; their reputation in the field differentiates them from other potential suppliers, creating an effective barrier to entry. These advantages accruing to existing firms on the basis of established reputation will be referred to hereinafter as product differentiation advantages. The barriers to entry into certain segments of the market, created by these product differentiation advantages, will be labelled mobility barriers.² For specialized legal services, product differentiation advantages to established firms are acting as mobility barriers to potential entrants.³

Information or specialty advertising is generally advocated as a means of combatting product differentiation advantages.⁴ If other firms are able to make themselves known, it is posited that consumers would not be compelled to rely so heavily on established reputation in lawyer selection. The argument of course depends on the existence of a group of uninformed clients who, through lack of knowledge of alternatives or lack of ability to evaluate quality options even if they were aware of them, are serviced by the established firms. However, it is likely that most of the consumers of specialized legal services are informed about lawyers with appropriate expertise, experienced in dealing with lawyers, and knowledgeable about the kinds of matters requiring a lawyer. Lawyer selection in these specialties and the distribution of service provision among firms is therefore unlikely to be altered through the introduction of specialty advertising. To the extent that an uninformed fringe of clients exists, advertising, by lessening product differentiation advantages, may cause the number of suppliers in these specialties to increase.

2. Remote Locations

Northern Ontario emerged from the examination of concentration as an oligopolistic segment of the market. The high level of concentration is not caused by a handful of large firms controlling service provision in a market with a healthy number of suppliers. Rather, the less populated regions of the province do not generate sufficient demand for services to support a large number of firms. Irrespective of demand considerations, the relative isolation of

this location may act as a disincentive to locating there. Thus, although northern Ontario does not require a large number of suppliers, the small number of firms located here probably reflects the relative isolation of the location as well as the limited demand. As a result, it is likely that the area is underserved relative to more densely populated regions.

In addition to the number of firms being limited, the average firm size is smaller here than in other postal code regions; there were no firms reporting more than ten lawyers.⁵ This is a direct result of the type of client served by northern Ontario firms; the majority are individuals and small businesses,⁶ whose demand requirements can be fulfilled by small general-practice law firms.⁷ The tendency for public corporations to be found as clients of large firms is a consequence of demand characteristics peculiar to them, such as a larger periodic demand, a wide range of service needs, and complex legal problems requiring a specialist, to name a few.⁸ Since few large corporations are located in northern Ontario, the conditions that would dictate the development of large firms do not exist.

This discussion has shown that the region under consideration is characterized by small and medium-sized firms serving primarily household and small business clients. It was previously seen that these two client groups tend to be inexperienced, unknowledgeable and often misinformed with regard to lawyers' services.⁹ In a rural setting, however, the same client groups have better access to information about lawyers and their services. In small communities, where everyone is known to everyone else, informal communication networks are an efficient, effective means of information generation

and transmission. Barlow Christensen has noted in the context of the small town that,

"although the average person in that setting was probably not very knowledgeable or sophisticated, his problems were correspondingly limited in variety and simple in nature. The lawyer's practice was thus apt to involve a fairly narrow range of services relating to common and comparatively uncomplicated matters. Consequently, even the least sophisticated member of the community was able to recognize his legal problems and know the kinds of services a lawyer offered for their solution. He was also likely to know what those services would cost and to know, or be able to find out easily, a good deal about the qualifications of available lawyers."¹⁰

Thus, unlike their urban counterparts, household and small business clients in remote areas are likely to know the alternative lawyers available, what services they provide and how much they charge. The information channels in the community might also act as an incentive for the lawyer to provide good service - customers can quickly communicate their satisfaction (or dissatisfaction) with large potential consequences for a lawyer's reputation.¹¹

In spite of significantly greater client information in rural as opposed to urban settings, there is less competition in the former than in the latter. The concentration in service provision in northern Ontario¹² and the probable underservicing there have already been noted. One probable effect of this market isolation is somewhat higher prices for legal services than might be charged in other locations.¹³ This raises the possibility that some consumers are being priced out of the market. However, improved access to lawyers' services in the form of lower prices or increased supply may be difficult to achieve.

Advertising is unlikely to have a large impact on market structure in northern Ontario, in terms of increasing the number of

suppliers. Given the extensive information networks in these communities, product differentiation advantages accruing to established firms are not likely to be significant. That is not to say that reputation is unimportant in lawyer selection, but rather, that the characteristics of each firm are known. There are therefore no mobility barriers to entry into these locations which advertising might help to eliminate.¹⁴ Advertising might also be expected to increase supply by encouraging service provision by non-locally based firms; however, the associated transaction costs render the likelihood of this possibility small.

Excess supply conditions developing in other areas may drive lawyers further north but this region will probably be the last to develop a lawyer surplus for reasons noted previously. The effect of an increased supply may be some downward pressure on prices, but significant cost reductions depend on alterations in the mode of delivery, specifically efficient utilization of paraprofessional manpower. Many of the legal services demanded by households are simple transactions that are easily standardized.¹⁵ As such, there is substantial scope for the development of low-cost operations involving extensive delegation of specialized tasks to paraprofessionals and minimal professional inputs, primarily supervisory in nature. The financial viability of this delivery alternative is contingent upon the ability to attract a large volume of business. However, the demand potential in northern Ontario is constrained by the limited population base there. This solution to the access problem is therefore much more likely to succeed in more heavily populated centres.

The remaining possibility is permitting paraprofessionals to offer their services directly to the public for simple legal transactions.

Despite the imperfect ability of households to discriminate the quality of lawyers, which is the justification for licensing in this market, the special circumstances prevailing in this remote area render other means of increasing supply impracticable. At the same time, the superior information available to rural as opposed to urban household clients, the routine nature of the majority of household legal transactions in small communities, and the access problem in northern Ontario may render this last alternative desirable.

3. Corporate Clients

Public corporations and therefore the law firms that serve them, tend to be located in Toronto and, to a lesser extent, in other urban centres in Ontario. Due to frequent interaction with lawyers including in some cases, in-house legal counsel, corporate clients are knowledgeable with regard to service requirements, lawyer selection and quality recognition.¹⁶ Service provision to this client group is concentrated among a few large law firms; this is especially the case for clients of Toronto firms.¹⁷ However, it is clear that the rationale for corporations choosing the best-known and largest firms is not lack of knowledge of alternatives or concerns about search costs. Rather, a variety of social and economic considerations are responsible for the choice of provider.

The demand characteristics of the corporate clients render provision by small firms impossible. The law firms offering services to these clients must be able to provide the wide range of services required,¹⁸ withstand the fluctuations in demand by any one client and

meet the large periodic volume of demand. Only large firms would have a sufficient number of lawyers to offer an entire service package and to complete large amounts of work quickly. These firms would also have a sufficiently large clientele to absorb the variations in demand by individual clients.

The established firms may also attract corporate clients because of real quality differences. The high-ability lawyers wishing to specialize in corporate law, seek employment in the largest firms because the demand characteristics of the largest clients imply that the most challenging corporate work accrues to these firms. In turn, the reputation of these firms is enhanced by the high-ability lawyers employed in them. Moreover, the division of labour in the largest firms allows complete specialization of lawyers within firms despite diversity in the services offered to the client.¹⁹ This practice ensures expert service to clients in any specialty offered by the firm.

Aside from expectation of superior service, corporate clients may choose an established law firm simply because of its reputation. In other words, in addition to the likelihood that these firms are among the best in certain areas of practice, they may also be regarded as the best. For example, the top litigation lawyers from the most prestigious firms may be accorded a measure of respect and recognition in court that would not accrue to competent lawyers from less well-known firms. Corporations interested in projecting a certain image, may be willing to pay for the reputation as well as the quality of a particular law firm.

The product differentiation advantages enjoyed by the large firms with regard to corporate clients effectively limit the

competitiveness of this sector and form a significant mobility barrier.²⁰ Entry into this market segment occurs at the individual level through expansion of existing firms. It is not the creation of new firms which accounts for any increases in the supply of lawyers' services available to these clients; rather, as the demand of corporate clients grows, established firms are able to capture the full increase in service volume by hiring more lawyers. Indeed, a comparison of the largest Ontario firms (by number of lawyers) in 1971 and 1977 reveals the relative stability of firms offering services in this sector, and by implication the barriers to firm entry. Of the twenty-seven firms in Table IX.1, only four were not among the largest Ontario firms in 1971 (see Table V.8). Moreover, the large percentage increase in the number of lawyers in these firms between 1971 and 1977 confirms that entry occurs at the individual level.

There are several conceivable situations which would result in new firms entering this market. First, it may be that there is a limit to the potential growth of law firms in terms of the organizational difficulties associated with increasing firm size. This phenomenon, if it occurred, would tend to encourage the affected firm to sub-divide into two or more smaller operations.²¹ A second possibility, similar in form to but different in motivation from the first, is that of firms splitting up due to incompatibilities among the lawyers. Indeed, several Toronto firms have emerged as a result of a faction within a firm breaking off and forming a new entity. However, lawyers who split from the parent firm may risk a loss of income, especially if they do not take with them a large number of

TABLE IX.1

Law Firms in Ontario with Largest Number of Lawyers, 1977 - Percentage increase in size since 1971 ^a

	1971	1977	Percentage increase ^b
Aird, Zimmerman & Berlis		32	
Bassel, Sullivan, Lawson & Leake	16	22	38%
Blake, Cassels & Graydon	67	96	43%
Blaney, Pasternak, Smela & Watson	23	35	52%
Bordon & Elliot	44	56	27%
Campbell, Godfrey & Lewtas	19	35	84%
Cassells, Brock	18	30	67%
Day, Wilson, Campbell	20	24	20%
Fasken & Calvin	35	45	29%
Fraser & Beatty	46	64	39%
Gardiner, Roberts	22	26	18%
Goodman & Carr	21	32	52%
Goodman & Goodman	14	28	100%
Harries, Houser	28	31	11%
Lang, Michener, Cranston, Farquharson & Wright	25	53	112%
Lash, Johnston	17	20	18%
McCarthy & McCarthy	56	77	38%
McMillan, Binch	30	42	40%
Miller, Thomson, Sedgewick, Lewis & Healy	16	24	50%
Osler, Hoskin & Harcourt	53	74	40%
Smith, Lyons, Torrance, Stevenson & Mayer		41	
Thomson, Rogers	43	25	42%
Tilley, Carson & Findlay	17	22	29%
Tory, Tory, Deslauriers & Binnington	23	45	96%
Weir & Foulds	19	29	53%
Gowling & Henderson (Ottawa)	35	56	60%
Soloway, Wright, Greenberg, O'Grady, Morin (Ottawa)	18	25	39%

a. Firms from Table V.8 that have dropped off in the 1977 list:

- 1) Holden, Murdoch, Walton, Finlay, Robinson;
- 2) Manning, Bruce, MacDonald & MacIntosh;
- 3) Robertson, Lane, Perrett, Frankish & Esty;
- 4) Shibley, Righton & McCutcheon;
- 5) Wahn, Meyer, Smith, Creber, Lyons.

b. Firm reorganizations may distort actual increase or decrease in percentages.

c. 1971 figure not available.

NOTE: For a related Table, see p. 84 above.

clients. Thus it would not be surprising to find that lawyers were hesitant to leave the security of the firm they were with. A third means of entry is that of growing with one's clients; that is, a small law firm expands as its business clients become successful and their legal needs increase. Finally, entry has been accomplished through the provision of new services deemed undesirable by the established law firms - the innovating firm quickly gains expertise in the area, builds a reputation for itself, and is soon offering a complete range of services. By the time the established firms decide to accept these cases (a case of money breeding respectability), the new firm has generated sufficient product differentiation advantages to secure and maintain its niche in the market. This trend has been observed in New York but not as yet in Ontario.²² This discussion has demonstrated that despite the possible avenues for entry by firms, splitting up of existing firms is the primary means used and this only occasionally.

The concentration in service provision, the product differentiation advantages enjoyed by established firms and the mobility barriers to entry into this sector all imply an uncompetitive market. Evidence of this market power exists in the form of higher fees charged to clients and consequently higher incomes accruing to lawyers.²³ Changing conduct regulations is unlikely to affect firm behaviour or market structure. For example, in this segment the introduction of advertising will neither ease entry nor alter lawyer selection patterns given the knowledgeable corporate clientele and the reluctance on the part of businesses to change lawyers.²⁴ Specialty designations are similarly superfluous

as a means of ensuring competence and of providing information to clients.

In spite of these anti-competitive tendencies in terms of the number of suppliers, there may be some control exerted by corporate clients over the prices charged; corporations may hire their own lawyer if the costs of outside lawyers' services exceed what is deemed a reasonable limit.²⁵ Indeed, evidence in other jurisdictions indicates a trend towards the use of in-house legal counsel, especially for traditional corporate work.²⁶ The result has been a shift in the mix of services provided to corporate clients, specifically a decrease in corporate law (which can be provided in-house) and compensating increases in other areas of demand, such as litigation.

The use of in-house counsel also provides a check on the quantity of services performed; it has been suggested that one factor contributing to the escalating services costs has been the provision of unnecessary services. Lawyers on salary within a corporation do not have the financial incentive to engage in this practice.

4. Household and Small Business Clients²⁷

The discussion of clients in Chapter IV indicated a major information problem on the part of households and smaller businesses with respect to lawyer selection and evaluation. Demand for legal services by this group of consumers is infrequent and largely non-repetitive; as such, accumulation of knowledge through experience is unlikely to occur.²⁸ The lack of experience and information renders these clients imperfect discriminators of variations in quality among

lawyers. Not only does this imply that consumers may be choosing the 'wrong' lawyer, but also that they may not be choosing any lawyer at all. In other words, the result of the information deficiencies may be reduced access to lawyers' services in the sense that the information climate may be generating certain conditions which inhibit the tendency to seek a lawyer. These factors include misinformation about the cost of legal services (expectations of prohibitive fees), client intimidation of lawyers (fear of seeming stupid or asking silly questions) and of the search process (not knowing what to look for in a lawyer), and perhaps most importantly, lack of problem recognition (not realizing the legal nature of a particular matter). The presence of these conditions, alone or in combination, may be sufficient to prevent large numbers of individuals from utilizing the services of a lawyer and implies that these clients may be underserved. The problem is especially significant given the likelihood of its pervasiveness; the vast majority of clients in every region in Ontario are individuals (including legal aid recipients) and smaller businesses (see Table IX.2).

The suppliers of services to these clients are diverse and range in size from sole proprietorships to the largest law firms,²⁹ implying that there are no scale advantages accruing to large firms in terms of the service requirements of this client group. Unlike the demand of corporate clients discussed previously, that of households and small businesses does not preclude service provision by small firms. Thus this sector is highly unconcentrated, reflecting the large number of firms of every size serving household and small business clients.³⁰ It would seem then that the barriers to entry operating in the corporate

TABLE IX.2

Percentage Distribution of Type of client by
postal code region.

	<u>K</u>	<u>L</u>	<u>M</u>	<u>N</u>	<u>P</u>
Public corporations	4	3	5	3	4
Non-public corporations and unincorporated businesses (Include sole proprietorships and partnerships)	16	16	24	18	13
Legal aid recipients	13	12	13	10	15
Other individual clients	61	63	55	65	62
Government and non-profit institutions	5	4	3	3	4
Other	1	2	0	1	2

K: Eastern Ontario

L: Central Ontario

M: Metro Toronto

N: Western Ontario

P: Northern Ontario

Source: Firm Questionnaire, Q.I.1, IV.4

client sector are absent here. Table IX.3 traces the firms in the sample from 1973 to 1977 indicating their growth in number and size over time. The ease of entry is attested to by the large increase in the number of sole practitioners and small firms in the last five years. The result is lower prices here than in the corporate sector.³¹ Given the mobility barriers to entry into the segment serving corporate clients,³² it is not surprising to find that the least growth (measured by number of firms) has occurred in the large Toronto firms.

In spite of the large number of alternative suppliers and the lack of barriers to entry, the restrictions on advertising imposed by the existing rules of conduct stifle innovative behaviour, such as new forms of practice, e.g. urban legal clinics, and preclude supply-side compensation for the information deficiencies of consumers, e.g. advertising as a means of providing information, the effect of which is to reduce access to lawyers' services for household and small business clients.

One means of increasing access to lawyers' services is to allow paraprofessionals to offer their services directly to the public. Imperfect buyer information, as the rationale for regulation, is seen to justify the imposition of minimum competence standards as a means of protecting an unknowledgeable public.³³ It may be argued that the level at which standards are currently set in law have exclusionary effects through reserving for lawyers' functions which can be performed as well by non-professionals.³⁴ If such functions can be identified, it may be possible to permit qualified paraprofessionals to perform these services independently, thereby reducing costs and prices in these areas. A thorough discussion of the appropriate role of paraprofessionals

TABLE IX.3

Number of Firms, 1973 - 1977, by location and size of Firm.

<u>TOTAL</u>	<u>Firm Size</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
1973	671	481	69	25
1974	739	554	67	23
1975	814	631	77	27
1976	936	696	91	30
1977	1013	737	97	35
% increase	(51)	(53)	(41)	(40)
 <u>TORONTO</u>				
1973	294	186	30	20
1974	325	215	30	18
1975	366	239	29	20
1976	434	257	35	20
1977	476	275	36	24
% increase	(62)	(48)	(20)	(20)
 <u>OTHER</u>				
1973	377	295	39	5
1974	414	339	37	5
1975	448	392	48	7
1976	502	439	56	10
1977	537	462	61	11
% increase	(42)	(57)	(56)	(120)

Source: Firm Questionnaire, Q.I.4

is presented in the chapter on paraprofessionals and will therefore not be further discussed herein.

At the heart of the access problem, however, is a need for increased information about lawyers which can be addressed in part through advertising. The balance of this section will be devoted to an examination of the role of advertising as a means of treating the information problems, at each of the three stages involved in a legal transaction, that is, the decision to consult a lawyer, search and selection, and evaluation of service.

(a) Decision to Consult

One aspect of the information generation value of advertising is its potential for increasing recognition of appropriate occasions for utilizing lawyers' services. To this end, generic or institutional advertising of the sort currently being undertaken by the U.K. Law Society, has an important role to play.³⁵ The advertisements in Britain are aimed at improving public awareness of the hidden complexities and legal implications of a variety of apparently straightforward matters and of the dangers inherent in attempting to solve these problems independently.

The advertisements can and should take a variety of forms to ensure mass exposure: these include media advertising (radio, television and newspapers) and distribution of brochures or pamphlets in community centres, libraries and educational institutions. As such, it is hoped that the public will increasingly recognize the legal nature of a range of problems and appreciate the positive value of lawyers as sources in

resolution (or prevention) of these matters.

It is interesting that opponents of solicitation by lawyers argue that the number of legal disputes will increase unduly with the introduction of advertising.³⁶ However, to the extent that valid legal claims are not being redressed owing to a lack of consumer information, any increase in litigation would represent improved access to our system of justice and not necessarily the pursuit of frivolous claims.³⁷

In terms of the intimidation factors noted previously (inability to choose a lawyer, fear of excessive fees), institutional or generic advertising can provide information about ranges of fees for different legal transactions and perhaps a checklist of characteristics to look for in a lawyer. On the other hand, these aspects of the access issue may be better remedied through collective and individual advertising. In other words, what is required is information about alternative lawyers, beyond simply their names, addresses and telephone numbers, which is, at present, the only information permitted in the yellow pages, on business cards and office letterheads.

There are some who would argue that the reputation of the lawyer, built up over time, should speak for itself and that advertising one's own capabilities or qualifications is no basis for a recommendation and is also unprofessional. However, it must be remembered that the well-established communication networks of smaller communities are largely absent in an urban or suburban context.

"Often the reputations of lawyers are not sufficiently known to enable laypersons to make intelligent choices. In addition, the law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and

many laypersons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers, the qualifications of particular lawyers, and the expense of legal representation leads laypersons to avoid seeking legal advice."³⁸

Moreover, if the aim of the profession is to serve the community, the absence of advertising is inimical to that objective insofar as the information deficiencies noted above, are inhibiting the tendency to consult a lawyer.³⁹ It seems clear then that both institutional and individual advertising are useful as a means of increasing access to lawyers' services.

(b) The Search and Selection Process

In terms of helping consumers make an informed selection, collective and individual advertising would also be useful to clients and potential clients. At present, consumers rely primarily on recommendations from personal acquaintances to select a lawyer. Unfortunately, the third parties consulted may be as equally uninformed as the individual seeking the advice; this is especially likely among the inexperienced household clients who are most in need of accurate information.

The survey data⁴⁰ indicate that the heavy reliance on recommendations from friends, relatives and colleagues represents a lack of alternative sources of information and that consumers would prefer to make an independent assessment. As such, dissemination of

information about individual lawyers through advertising is required. That is not to say that consumers will cease to obtain advice from personal acquaintances; rather, consumers are likely to seek substantiation of information obtained through advertisements from people they know and whose credibility they have established.⁴¹

The kinds of information that would be useful in lawyer selection include (i) basic office information such as location, office hours, telephone numbers, and languages spoken; (ii) relevant biographical information about the lawyers, such as educational background, years of experience, and preferred areas of practice; and (iii) fee information, such as hourly rates, ranges of fees for some transactions or specific fees for certain services.

(i) Office Information

The first category of information, that is, office information, is straightforward, and in no way subject to misinterpretation by an unknowledgeable public.

(ii) Biographical Information

With regard to information about lawyer qualifications, capabilities, and areas of practice, the concerns, of course, relate to the potential for misleading the public in that information about years of experience, educational background or self-designated areas of practice may be interpreted as implying expertise.

There are several alternatives other than a ban on advertising

which can deal with this potential problem. An obvious starting point, as recognized by the American Bar Association, is a prohibition against "public communication, containing a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim."⁴²

"Examples of information in lawyer advertising that would be deceptive include misstatements of fact, suggestions that the ingenuity or prior record of a lawyer rather than the justice of the claim are the principal factors likely to determine the result, inclusion of information irrelevant to selecting a lawyer, and representations concerning the quality of service, which cannot be measured or verified."⁴³

Most of the concerns regarding the potential for misleading the public relate to announcement of specialties. One way of avoiding implications of expertise where they do not exist is to introduce a full-scale program for the certification of specialists as a means of ensuring the competence of lawyers who advertise areas of practice. However, given the nature and scope of the information problem previously identified, this response might be unduly restrictive and introduce unnecessary rigidities and distortions into the market. This point deserves elaboration.

The information problem relates primarily to household clients, especially those in urban centres. In fact the majority of the studies discussed earlier in this paper surveyed only household as opposed to business clients, and respondents were asked to consider transactions with lawyers relating only to household matters in answering questions. The survey of Ontario clients sampled business clients of all sizes in addition to individuals. The results obtained indicate that clients are distributed by size along an information continuum, the large corporations, at one extreme, are knowledgeable, sophisticated and experienced consumers, while households and small businesses at the other extreme are characterized by a lack of

information and infrequent, non-repetitive demand.

Moreover, other studies⁴⁴ have demonstrated the existence of well-established informal communication networks in smaller communities which serve as an efficient, effective means of information generation and transmission. Thus, unlike their urban counterparts, household and small business clients in these settings are likely to know the alternative lawyers available, what services they provide and how much they charge.

The most serious information problems can therefore be isolated to a subset of consumers, specifically urban (or large town) household clients: this seems to weaken the case for a full-scale program for the certification of specialists as a means of treating information deficiencies in the market and guaranteeing the quality of lawyers that advertise.

First of all, the majority of household legal transactions are such that most lawyers can execute them. Secondly, specialty accreditation as a pre-condition to advertising may guarantee the quality of lawyers who advertise, but ignores the crucial issue of improving access to lawyers' services, since only a limited number of lawyers would be likely to qualify. Finally, the data collected by the Committee from its survey of professional firms leave no doubt that lawyers concentrate their practice; almost all lawyers spend more than 50% of billable time in a single area of law.⁴⁵ Since consumers need information about the types of work performed by different lawyers, and since lawyers, in fact, focus on specific areas of law, self-designated areas of practice might be an appropriate means of providing the required information to consumers.

There is still a potential for misinterpretation. As such, mandatory disclaimers might be used to the effect that the areas of practice listed represent the areas of interest of the lawyer and do not connote special expertise. To the extent that there is still a concern about misleading claims, there are several mechanisms which would be considered by way of checks on lawyers who advertise. The simplest way to ensure uniformity and accuracy of advertising is to limit publication of such information to a legal directory. The kinds of information which might be included in a directory are those detailed previously, that is office information (address, telephone numbers, office hours, languages spoken), some biographical information, such as year of call to the Bar, law school attended, and preferred areas of practice, and limited price information such as fee for an initial half-hour consultation.⁴⁶

To ensure mass exposure to this source of information, consumer awareness of the directory would have to be achieved through an institutional advertising campaign. However, this is an incomplete means of improving information flows since the information required by clients will vary with their location, type of legal problem, language spoken, and a variety of other characteristics. Thus, lawyers may prefer, having identified their target clientele, to gear the content and form of communication towards this group. Therefore, in addition to publication of a legal directory, individual advertising might be a useful way of increasing the information available to clients. At the same time, given the imperfect ability of consumers to discriminate the quality of lawyers, it may be desirable to impose some controls or obligations on lawyers that advertise. The existence of an inexperienced

unknowledgeable clientele implies that it may not be sufficient to rely on client initiated complaints, as is the case with existing disciplinary procedures, to address misleading claims since discovery of deception may not occur. In terms of preventing misleading advertising, it is possible to require lawyers to submit for approval a copy of each advertisement to the Law Society or some other overseeing body with appropriate authority. The alternative is to control quality directly by implementing random quality audits on lawyers who advertise. It should be noted that both of these options, which may be implemented alone or in combination, could be financed through fees collected from lawyers who advertise.

A final point which should be mentioned is the potential for overinvestment in advertising in this market. There are some goods or services, including lawyers' services, for which it is impossible to observe quality prior to purchase.⁴⁷ For products with this characteristic, suppliers must generate signals of quality. To the extent that intensive advertising is indicative to consumers of a successful or high quality product, it has been shown that there are strong incentives for producers to advertise heavily, that is, imitate the signals of quality to create the impression of having a high quality item for sale. In the market under consideration, the amount of advertising might be assumed by consumers to indicate the quality of the lawyer's services being offered. As such, there may be a need to restrict the quantity of advertising. For example, it is possible to limit the media in which advertisements may appear. This alternative has been suggested in the amendments to the ABA Code of Professional Responsibility concerning lawyer advertising, in which it is

recommended that print and radio advertising be permitted, while reservations are expressed with regard to television advertising, "due to the style, cost and transitory nature"⁴⁸ of this medium. In other words, although advertising may be an appropriate response to the lack of consumer information, it will not eliminate the problem. The information deficiencies and consequent imperfect ability to discriminate the quality of lawyers may imply a need to monitor the content and scope of advertising.

(iii) Fee Information

There are those who would argue that price advertising will have an adverse effect on professionalism, in that the profit motive will replace the commitment to the client's welfare thereby undermining the source of public confidence in the profession (that is, its service orientation) and lowering public esteem of lawyers. As noted by the majority of the U.S. Supreme Court in Bates and O'Steen⁴⁹ "the postulated connection between advertising and the erosion of true professionalism" is weak.

"At its core, the argument presumes that attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar. We suspect that few attorneys engage in such self-deception. And rare is the client, moreover, even one of modest means, who enlists the aid of an attorney with the expectation that his services will be rendered free of charge." ⁵⁰

In fact, some segments of the market are already quite competitive - the firm survey data indicate that there is significant undercutting of the Law Association tariff in real estate conveyancing,

especially in Toronto; according to the data, less than half the real estate work there is billed at the rate established by the tariff schedule. Outside Toronto the percentage rises to between 70% and 75% depending on firm size. As such it is untenable to maintain that lawyers can be isolated from competitive forces. Moreover, the Canadian Bar Association has already adopted as a rule of professional conduct that a "lawyer should give the client a fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make informed decisions,"⁵¹ and the Law Society is considering incorporating such a rule into its Professional Conduct Handbook. It follows that,

"If the commercial basis of the relationship is to be promptly disclosed on ethical grounds, once the client is in the office, it seems inconsistent to condemn the candid revelation of the same information before he arrives at that office."⁵²

Another objection to price advertising focuses on the inherently misleading nature of such information. This argument disputes the potential for identification of standardized services for which prices can be determined and compared. In other words, the contention is that there is no such thing as a "routine legal service" in that, for example, even an uncontested divorce can vary with respect to whether e.g. alimony, child support, or property issues require to be resolved. However, as noted in the Bates' decision,

"Although the precise service demanded in each task may vary slightly, and although legal services are not fungible, these facts do not make advertising misleading so long as the attorney does the necessary work at the advertised price." ⁵³

In terms of deception there are two possible means of misleading the public. A lawyer might advertise a service at a specific price and

raise prices shortly thereafter, or claim that the service required by the client is sufficiently complex to warrant higher fees. These potential problems do not justify a ban on price advertising. Rather, with regard to the former situation, it may be necessary to institute minimum time periods for which advertised prices hold; in fact, a thirty-day minimum has been suggested by the American Bar Association in its recommendations on lawyer advertising.⁵⁴ With regard to the latter possibility it may be desirable to require lawyers to submit evidence indicating that some percentage of transactions for which prices are advertised are performed at the quoted price. This procedure would be sufficiently flexible to allow for deviations from the advertised prices in exceptional circumstances. On the other hand, it may be preferable to require that the lawyer render the service for no more than the fee advertised no matter what complications arise. In this way, lawyers would bear the financial risk associated with the inevitable variations in complexity of a particular service provided to different clients, and would therefore only advertise prices for those services for which they are confident a single price can apply. Of course, not all legal services are subject to standardization. With regard to those that are not, the price information contained in advertisements might refer to methods of fee calculation for various transactions, the range of prices for different services, and the lawyer's hourly rate.

Another objection to price advertising centres on alleged undesirable economic effects, such as higher costs and prices and increased entry barriers. There are several responses to this assertion. First of all, to the extent that advertising lowers search

costs to consumers, the 'full price' (inclusive of information costs) paid for lawyers' services is reduced.⁵⁵ Moreover, evidence accumulated in other professions indicates that point of service charges are lower in jurisdictions that permit advertising.⁵⁶ Lower prices (in either of the above senses) imply improved access for existing clients and attract new consumers whose reservation price has been reached.

Thus, advertising can only be seen to increase costs and prices if service volume is fixed, that is, if demand is inelastic. However, it has been demonstrated earlier in this report that there is a significant element of unmet demand for lawyers' services in the household sector. The data collected in the various client surveys indicate that lawyers are not being consulted for a variety of matters with a legal orientation, such as consumer, employment and landlord/tenant problems. In addition the Canadian Gallup Poll results show that a minority of individuals (34%) have dealt with a lawyer for drawing up a will. In other words, there is ample scope for increasing the use of lawyers' services. It must also be remembered that consumers expressed concern about the expected cost of legal services. Given the non-essential nature of the services mentioned above (in the sense that a lawyer's service is not required) and the potential for substituting other resources (such as an insurance adjustor in tort matters) in resolving these matters, one would expect variations in the price of lawyers' services to have a fairly large impact on demand. In other words, the demand for lawyers' services in certain areas of law is sufficiently elastic to ensure significant potential for increasing service volume via lower prices.

In addition, advertising can be expected to encourage innovation in the household sector which, in turn, would increase access to lawyers' services in the form of lower prices.⁵⁷ The incentive to innovate is constrained by the inability of producers to generate financial benefits from cost-saving innovations due to the ban on advertising. A sufficient return to innovation can only be achieved if professionals are able to announce and pass on cost reductions to consumers in the form of reduced prices, thereby increasing service volume.⁵⁸

One means of reducing the costs associated with any particular transaction is to economize on the use of professional inputs by substituting less expensive paraprofessionals. The data from the firm and paralegal surveys show that certain functions are already performed quite often by non-professionals.⁵⁹ As mentioned previously,⁶⁰ the nature of household demand is such that some transactions are fairly routine and can be partly standardized. This implies substantial scope for increased utilization of auxiliary personnel. In fact for some legal services, it should be possible to establish a low cost operation based on extensive delegation of specialized tasks to paraprofessionals, and lawyer involvement of a primarily supervisory nature. It is clear that the financial viability of this delivery alternative is contingent upon the ability to attract a large number of clients. However, consumers must be made aware of the existence of less expensive suppliers to use them. Therefore, this innovative mode of delivery will not be developed as long as restrictions on advertising continue.

There are other cost-saving innovations whose development

is inhibited by the ban on advertising. These relate to economies in service provision associated with more efficient division of labour in larger firms. First, it is possible in large firms to have complete specialization of lawyers within firms despite diversity in services offered to clients⁶¹ since each lawyer, or group of lawyers can focus on a different area of law. Secondly, more extensive utilization of paraprofessionals⁶² is feasible in that the volume of work generated in particular areas of law is sufficient to keep one or more paraprofessionals fully occupied. At present the large number of sole practitioners and small firms in the household sector renders these sources of efficiency impracticable. Moreover, with respect to utilization of paraprofessionals,

"Cost-minimization through delegation of services to auxiliary workers, given a fixed total volume of services produced, may lower unit costs of production but at the same time lower the utilization of professional time itself. Profits of the professional enterprise may rise, but the take-home pay of the professional falls. Hence the professional enterprise may not choose least-cost ways of producing output, but instead may be biased toward overuse of high-cost professional time."⁶³

With the introduction of advertising, however, average firm size may increase as lawyers join forces to take advantage of scale economies associated with shared advertising costs. This implies greater opportunities for efficient division of labour within firms of the two types noted above, the cost-reducing aspects of which can be passed on to consumers through reduced prices. In other words, lawyers who share office space can advertise that they offer a range of services at a single location even though each lawyer is practising in a specific, but different area of law. Moreover, the ability to

increase service volume through advertising may help eliminate the problem of underutilization of less expensive auxiliary personnel.

Advertising is likely to help firms establish a reputation in the household and small business sector; indeed, in terms of supply-side effects, one of the main attractions of advertising in addition to encouraging innovation and efficiency, would be the increased ease of setting up a practice in terms of the ability to generate a clientele. It must be remembered that suppliers as well as demanders are prejudiced by the inability to generate information. The increasing competitive advantages for firms as opposed to individual practitioners associated with the introduction of advertising indicate a tendency towards greater concentration in this sector and imply that one possible adverse consequence of advertising/concentration is reduced scope for independent practice.⁶⁴ Insofar as costs and benefits of advertising have been identified, it seems that the numerous improvements in consumer welfare detailed in these pages would outweigh any adverse effects of increasing market concentration associated with the introduction of advertising.

(c) Evaluation

The two main areas of consumer dissatisfaction with lawyers' services⁶⁵ were work habits and prices. With regard to the former, clients indicated that lawyers were slow and failed to keep them informed of the progress of their cases. Advertising can address this problem in two ways.

First, institutional advertising, by teaching consumers

about the various stages involved in different legal transactions and their associated time implications, can help eliminate complaints about delays or slowness arising out of ignorance of legal processes. Secondly, to the extent that individual advertising ensures a better match of client needs to lawyer skills, it is likely that there will be fewer complaints about slowness. On the other hand, sloppy work habits or lack of lawyer effort are competence-related problems which deserve attention but which advertising cannot address.

Finally, with regard to dissatisfaction with the level of fees, price advertising may be able to increase consumer awareness of prices charged by alternative lawyers thereby reducing dissatisfaction since an informed selection would be made. However, it must be remembered that the survey data indicated a general feeling that all lawyers overcharge and that they charge more for their services than they are worth. As such, it may be that an improved understanding of what lawyers do, accomplished through institutional advertising, would help as much in overcoming this unfavourable impression as would publication of prices.

Footnotes

1. Supra, Table VI.28, p.139, for data on average hourly rates, which show that in these specialties fees are among the highest.
2. Caves and Porter, "From Entry Barriers to Mobility Barriers: Conjectural Decisions and Contrived Deterrence to New Competition," pp.241-261.
3. A potential entrant in this market is a lawyer whose evaluation of the difference between learning costs and expected income indicates that there is a positive rate of return to investment in the specialized knowledge.
4. Aside from its information generation value specialty designations are also advocated as a means of guaranteeing expertise in a specific area of law. In these specialties, however, it is clear that lawyers who do not possess the appropriate specialized knowledge refer matters to ones who do.
5. Supra, Table VIII.9, p.182.
6. Infra, pp.196-197.
7. Indeed, the data on specialization indicate that firms and lawyers outside Toronto concentrate practice in areas of law required by household and small business clients, supra, pp.148, 157-158.
8. For fuller elaboration of this argument see below, pp.191-192.
9. Supra, pp.27-37.
10. Barlow F. Christensen, Lawyers for People of Moderate Means, Some Problems of Availability of Legal Services, p.129.
11. In this context it should be noted that specialty designations are not needed as a means of generating information, given the well-functioning information networks, or as a means of ensuring special competence, given the simple nature of the legal problems in this setting.
12. Supra, p.180.
13. There is some evidence from the firm survey that outside Toronto firms are able to charge higher prices in that larger percentages of billings are invoiced to conform with the law association tariff in firms located outside Toronto.
14. It has been suggested that, in markets characterized by uninformed clients who discriminate quality variations imperfectly, advertising is likely to generate product differentiation advantages which might increase market concentration. It is worth noting that the argument presented above implies that this effect is precluded in northern Ontario communities.

15. David Engel, "The Standardization of Lawyers' Services."
16. Supra, pp.52-62.
17. Supra, p.177.
18. See the chapter on specialization for a discussion of diversification of activity by larger firms, supra, pp. 150-154, 157-163.
19. Supra, pp.162-163.
20. Infra, Table IX.3, p.200, which shows the relatively limited growth in the number of large Toronto firms.
21. The problem of unwieldy firm size has been encountered primarily in the United States where some firms report a staff of over 200 lawyers. The largest Ontario firms have not yet exceeded 100 lawyers.
22. Peter Bernstein, "The Wall Street Lawyers are Thriving on Change" Fortune, March 13, 1978.
23. Supra, Table VI.27, p.137, for data on average hourly rates by firm size and location which confirm this point. See also p.83 showing higher fee revenue in the largest firms.
24. Advertising may well affect non-corporate or household clients' selection process, an issue which will be addressed in the following section.
25. Prices and incomes may remain higher in the largest firms than in the more competitive segments, for reasons noted previously. What is argued is that there is an upper limit on the prices which will be tolerated by corporate clients.
26. Peter Bernstein, op. cit., n.22.
27. The business clients referred to in this section do not comprise the entire group of unincorporated businesses and non-public corporations not covered in the previous section. Rather, they are the small one-man operations and partnerships who display the information characteristics of household clients. That of course leaves a whole range of business clients who are not analysed specifically in this or the previous section; let it suffice to note that the group omitted are knowledgeable, experienced users of lawyers' services for whom the analysis of the previous section applies in a less extreme form. In other words, service provision is less concentrated in that suppliers to this group include medium-sized firms; few of these businesses are large enough to have in-house counsel, and entry is probably not as difficult into the sector serving these clients.

28. Supra, p.29
29. Supra, p.87.
30. Supra, p.177.
31. Supra, Table VI.27, p.137 and Table VI.28, p.139.
32. Supra, pp.192-193.
33. Thomas Moore, "The Purpose of Licensing."
34. Friedman, "Occupational Licensure." Connell, Noll, and Weingast, "Safety Regulations."
35. The U.K. Law Society published brochures and designed advertisements for newspapers and radio which in cartoon form indicated a variety of situations in which it would be wise to consult a lawyer.
36. Harold Hotelling, Jr., "Lawyers, Advertising and Competition." p.4.
37. This latter problem relates to implementation and enforcement and is not a rationale for a ban on advertising.
38. Amendments to ABA Code of Professional Responsibility concerning lawyer advertising by the House of Delegates on August 10, 1977; EC 2-7; in American Bar Association, Standing Committee on Specialization, Bulletin #3.
39. Bates & O'Steen v. State Bar of Arizona, 45 L.W. 4895 (1977), at p.4900.
40. Supra, chapter IV.
41. Jack Ladinsky, "The Traffic in Legal Services: Lawyer-Seeking Behaviour and the Channeling of Clients," 1976, 11 Law & Society Review, Vol.2, No.2, p.221.
42. Amendments to ABA Code, op. cit., n.38, p.12.
43. Ibid., p.7.
44. Jack Ladinsky, op. cit., n.41.
45. Supra, p.155.
46. Douglas Moles, "A Question of Responsibility: Lawyer Advertising and the Public Interest," student essay, University of Toronto Law School, mimeo., 1978. A legal directory containing information of the sort detailed above has been published in the state of Oregon. See Oregon State Bar 1977-78 Lawyers' Directory.

47. Ejan Mackaay, "The Costliness of Information and its Implications for Economic Analysis of Law," chapter IV, pp.100-105.
48. Amendments to ABA Code, op. cit., n.38.
49. Bates and O'Steen, op. cit., n.39.
50. Bates and O'Steen, op. cit., n.39 at p.4900.
51. The Canadian Bar Association, Code of Professional Conduct, Rule X(3), p.40.
52. Bates and O'Steen, op. cit., n.39 at p.4900.
53. Ibid., at p.4901.
54. Amendments to ABA Code, op. cit., n.38, DR2-101(E) to (G).
55. Charles Baird, "Advertising by Professionals," p.15.
56. Benham & Benham, "Regulating through the Professions: A Perspective on Information Control," Journal of Law & Economics, and "The Effects of Advertising on the Price of Eyeglasses," Journal of Law & Economics, (1972).
Douglas B. Campbell, "Attitudes of NRTA-AARP Florida Members Toward Eyeglass Purchase and Advertising."
57. Michael Spence, "Entry, Conduct & Regulation in Professional Markets," Working Paper #2 prepared for the Professional Organizations Committee (1978). This section will rely on ideas contained in this Working Paper.
58. As noted previously, there is an elastic demand for lawyers' services in certain areas.
59. See Chapter X on Paraprofessionals.
60. Supra, p.190. David Engel, "The Standardization of Lawyers' Services."
61. Supra, p.163.
62. See Chapter X on Paraprofessionals.
63. Robert G. Evans, "Universal Access - The Trojan Horse," in The Professions and Public Policy, eds. Michael J. Trebilcock and Philip Slayton (Toronto: University of Toronto Press, 1978).
64. Spence, op. cit., n.57, p.30.
65. Supra, pp.43-52.

X. Paraprofessionals

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X. Paraprofessionals

A. Introduction

It seems unlikely that the lawyers' delivery of legal services has substantially changed during the last two hundred years. The lawyers successfully contended for monopoly privileges in 1792. Since that time, they have been reluctant to tolerate the performance by non-lawyers of legal tasks. Their expressed concern is to seek to maintain a high standard of service to the public. The non-lawyer observer may more readily admit the role of exclusivity in preserving the professional monopoly and in maintaining high levels of income. The profession has at no time relaxed its stance against non-lawyers who would erode the lawyers' monopoly. This position has been maintained at the price of some public criticism, some of it highly placed. In 1972, for example, the then Minister of Justice Otto Lang ventured the opinion that:

"I think it is essential that our profession break away from the monopolistic notion that legal service of all types can be verified only by the lawyer who has gone through the present lengthy process of admission." /1

Short of admitting non-lawyers to the practice of law, there has been a gradual recognition over the last several decades of the desirability of the use of paraprofessional personnel in the private law firm under the supervision of lawyers.^{2,3} Such law firm personnel may be characterized as follows:

1. they are not lawyers;
2. they are not articled students;
3. they are not receptionists or
legal stenographers;
4. they perform tasks historically
thought to be within the exclusive
preserve of lawyers;
5. they are employed by lawyers;
6. their work is performed under the
supervision of lawyers;
7. this supervision may be either actual
or notional.⁴

The private law firm anticipates positive returns in a number of directions when it hires a law clerk:

1. Job Satisfaction: there appear to be a variety of tasks too complicated to be performed by stenographers and other untrained personnel from which lawyers desire to be 'liberated'; particularly because of their routine nature, performance of these tasks has come to be regarded by some lawyers as inconsistent with their professional expertise and standing; liberation from such work makes for happier lawyers;
2. Cost Efficiency: every task which can be transferred from a highly paid professional to a lesser paid

paraprofessional represents a cost-saving which the firm may appropriate or pass on to the client; in addition, each lawyer-hour saved may be reallocable to additional income generating work where the volume of work is subject to increase.⁵

In Ontario, we appear already to have moved beyond a 'gestation period' characterized by exploring the role potential of legal paraprofessionals and into a 'take-off period' characterized by rapid expansion in the use of paraprofessionals together with rationalization of institutional supports.⁶ Our research indicates that the fifty or so law clerks employed in Ontario law firms in 1967 have been outstripped for a very large and expanding corps of legal paraprofessionals probably numbering in excess of 3,000. Because there is no official nomenclature in use, one hesitates to leap to the conclusion that the number of non-lawyers in the legal services market has increased by a factor of sixty. It may, for example, be the case that large numbers of persons who in 1967 would have been called legal secretaries are now called law clerks. Nonetheless, it seems certain that a considerable expansion has taken place in the numbers of legal paraprofessionals.

In the following material we present the data we have gathered on the following topics:

- (i) The Role of the Law Clerk in Canada, Great Britain and the United States
- (ii) The Recruitment of Law Clerks

(iii) The Training of Law Clerks

(iv) The Role of the Institute of Law Clerks.

B. The Role of Law Clerks

1. Introduction

The role that paralegals can and should play in the delivery of legal services has remained the threshold question in the discussion of paralegals. An official reluctance formally to countenance the delegation of any but the most menial tasks to non-lawyers has been a major limitation on innovation in law office routine.⁷ (We note here in passing that the inability to advertise cost saving techniques such as intensive utilization of paraprofessionals also decreases incentives to innovation by making it difficult to realize cost efficiencies). There has nonetheless been a growing realization that many of the lawyering tasks can be performed equally well by law clerks.

The private law firm has gradually adopted more efficient business methods and recognized that it must be administered in the same fashion as any cost effective business. The law firm has graduated from the part-time bookkeeper to office managers who have begun to analyse the cost effectiveness firms' use of professional time. They indicate that the lay person handling the more routine areas of law practice will potentially release "lawyer time" for more creative and more economically valuable work. Paralegals handling corporate returns, title searching and small claims court collections have allowed the law firm to continue to deliver services which might otherwise have been totally absorbed by non-lawyers.

2. Conveyancing

It appears that some considerable part of the lucrative conveyancing practice is in fact carried on by law clerks under the actual or notional supervision of their lawyer employers, (see Part C of this chapter). Law clerks will: (a) often attend initial interviews, (b) search titles, (c) draft documents, (d) draft letters of requisition, (e) obtain necessary municipal and provincial tax releases, (f) attend on vendors and purchasers motions, (g) attend on closings, (h) prepare reporting letters and (i) prepare accounts for clients.

It appears unlikely that there is any aspect of the lawyers' work in land conveyancing which is not systematically being performed by legal paraprofessionals. Which tasks are in fact performed by law clerks and under what actual supervision might be expected to vary with the complexity of the transaction, the size of the client, the type and location of the firm and, of course, the qualifications of the law clerk in question.

Professor Barry Reiter⁸ has indicated to us that there are four types of law firms handling the typical real estate transaction.⁹ The "blue chip" firms concentrated in the downtown core of the large cities in the province make extensive use of paralegals. The work of the paralegal is always closely checked by the lawyer. These firms are less concerned about efficiency as their clients are not as deeply occupied with the cost of the service.

The second type of firm is the "middle firm". This operation is characterized by a small number of established partners who are usually located in suburbs of larger cities and in smaller communities. These lawyers specialize in residential transactions and for the most part do not use paralegals other than in some instances for title searching. The solicitor does all the work himself for a number of reasons. He prides himself on the quality of his work. He charges only slightly less than the "blue chip firms" although his profit margin is generally greater due to lower overhead. Reiter indicates that such lawyers do not desire to do a high volume of business and that among lawyers practising in this type of firm paralegals are not highly regarded.

The third type of real estate firm is the so-called "new firm" which is characterized by one or more newly graduated lawyers. The firm's use of paralegals depends upon its economic development. Particularly in the early years of such a firm, all elements of the transaction are handled by the lawyers themselves. An experienced legal secretary may handle some aspects of the real estate transaction. As the firm later becomes established use is made of paralegals.

The fourth type of firm has been referred to as the "real estate mill". This type of firm is generally located in suburban areas but may also be found in smaller communities and downtown areas. It is characterized by its extensive use of paralegals and its low fees.¹⁰ The "real estate mill" fully

exploits the potential for delegation to legal secretaries and law clerks. The paralegal generally handles all aspects of the transaction with little or no supervision. The lawyer may have little to do with the operation of the real estate practice by law clerks. Unlike the "blue chip" law firm, paralegals are not closely supervised unless a problem arises. Clients may deal entirely with the law clerk and with the lawyer, if at all, only at the initial interview. This type of law firm has particularly developed in ethnic areas of Metropolitan Toronto where there is considerable competition for business. As a general rule, this type of firm does not generate any more profit over the course of a year than a "middle firm" of similar size.

Although Reiter's data breaks down law firms neatly into four categories, he found that the opinions of lawyers concerning paralegals are not so easily categorized. Some lawyers candidly admit that specific paralegals do work superior to their own in real estate conveyancing. Other lawyers view paralegals as untrained individuals who are responsible for the delay and confusion in the Registry Office. Opinions on these issues vary within each type of law firm.

Consumer benefits from the use of paralegals in real estate conveyancing vary considerably. In most smaller counties with a closely knit bar association the real estate tariff is followed. The client will receive an itemized bill but no indication will be made as to whether work was done by a lawyer or paralegal. If the title search is done by a free-lance title searcher, the client will receive this charge as a disbursement on his account.

Professor Reiter asserts that from the consumer's point of view who actually completes the real estate transaction is irrelevant since the lawyer or his insurer is ultimately responsible and many paralegals offer a higher quality of service than the average lawyer. Our interviews confirm Professor Reiter's data. The smaller law firm which uses paralegals in real estate matters is more willing to allow law clerks to handle most aspects of the transaction than the so-called "Bay Street" or "blue chip" firm. The law clerks exhibited considerable confidence in operating in the restricted area of the house and condominium transactions. The experienced real estate law clerk carries between fifty and eighty active files and is supervised on the average only three to four hours per week. Real estate lawyers who were interviewed indicated that their clients preferred law clerks to handle their real estate transactions as they did not wish to disturb the lawyer with what they considered to be routine concerns. Clients selected particular law firms because the law clerk shared a similar ethnic or national background and was well known within that community.

3. Litigation

A substantial number of paralegals work in the litigation area. One recent American survey indicates that 36.8% of the paralegals responding viewed litigation to be their primary area of responsibility.¹¹ Litigation and estates were

the two primary areas of employment of legal assistants surveyed by the American Bar Association in 1973.¹² Our own data shows civil litigation as a leading area of endeavour for legal paraprofessionals in Ontario (see Part C of this chapter).

Ontario law firms have divided the role and tasks of non-lawyers working within the civil litigation area into those of the legal secretary,¹³ the investigator and the litigation clerk. Investigators generally have backgrounds in police work or insurance claims adjusting.¹⁴ They use their fact gathering experience to investigate motor vehicle, products liability, occupier's liability and explosion cases. They attend at the scene of the accident as soon after the event as possible to collect statements, witnesses, photographs and other evidence.

The litigation clerk may undertake fact gathering aspects of a case where an investigator is unavailable or not employed by the firm. Litigation clerks are generally more office bound than investigators. They collect facts, medical reports and expense records by correspondence and telephone. Law clerks are increasingly preparing the motor vehicle file for settlement or examination for discovery having collected all the facts with respect to liability and damages and having made an assessment of the value of the client's claim. Several law clerks we interviewed not only prepare for discovery but also occasionally attend and conduct the examination. More frequently, the solicitor attends on discovery and conducts the settlement discussions. Law clerks will summarize the transcripts

of discoveries, launch any necessary motions, prepare the trial record and serve the certificate of readiness and the notice of trial. In preparation for trial a litigation clerk may update the trial brief, organize witnesses, serve subpoenas where necessary, and speak to the trial list. Law clerks assume responsibility for the case after trial by drafting judgments, releases, minutes of settlement, satisfaction pieces, bills of costs, appointments for taxation as well as the reporting letter and account to the client. The law clerk saves his principal time, frees him from the mundane repetitive tasks and allows him to concentrate on legal opinions and court appearances. Larger litigation firms even have law clerks to prepare appeal cases and to draft the appeal books and factums.

Our survey data (Part C of this chapter) shows that relatively few law clerks handle criminal or family litigation in Toronto. Firms practising in these areas may generally be smaller and less likely to use a law clerk. Some contend that their personal relationships with their clients, other counsel and court officials would not allow them to delegate responsibility to a law clerk. The small number of criminal law firms with more than two or three lawyers militates against the development of the criminal legal assistant. In smaller Ontario cities law clerks are not as specialized as Toronto law clerks and work on a range of civil and criminal matters. In a criminal case, clerks are asked to collect as much information as possible with respect to the Crown's case, to interview the arresting officer, any Crown

witnesses and breathalyzer officers and to obtain all relevant photographs.

There are few law firms specializing exclusively in family law. As family law specialists develop, firms are promoting experienced legal secretaries to law clerks. One Toronto firm recently hired a professional social worker to assist in difficult matrimonial disputes while another, with eight lawyers, nine legal secretaries, a part-time librarian and two articling students, has hired a law clerk. The law clerk spends her time approximately 25% on motor vehicle accident litigation, 25% on contested divorces and 50% processing adoptions, name changes and her typing. Her work in the family law area has been primarily confined to the firm's legal aid clients as her employers are less willing to have her handle matters which are not paid pursuant to the legal aid tariff. After the lawyer has made the initial assessment of the issues involved in the case, law clerks conduct initial interviews to obtain any detailed information from the client. The clerk drafts the petition and arranges for its issuance and service. The divorce petition is scrutinized by a lawyer before signing. The clerk will assist the client in dealings with the Official Guardian. This particular clerk's primary task is to keep the client informed as to developments in the divorce.

4. Wills and Estates

A substantial number of law clerks work in wills and estates departments. Modern office equipment allows the lawyer to create precedents for wills and Surrogate Court proceedings so that repetitive drafting and typing can be avoided and costs kept down. In a straightforward estate a law clerk may:

- (a) attend the initial interviews;
- (b) search out the assets;
- (c) draft, type and file documents;
- (d) obtain releases and probate;
- (e) transfer or redeem shares;
- (f) keep the estate's bank records;
- (h) prepare reporting letter and
statement of account.

The law clerk spends considerable time obtaining information from the executors. Approval is generally sought from the supervising lawyer for all documents he/she has prepared.

5. Corporate Law

In the corporate law area, law firms employ a number of stenographers who are trained to process the more routine corporate documents: annual returns, articles of incorporation and amalgamation and minute books.

Some experienced legal secretaries have been known to assume the more sophisticated responsibilities of a corporate law

practice. The corporate clerks will take instructions from the solicitor responsible for the file and determine with him what the best possible approach may be to the client's problem. The clerk may on occasion deal directly with the client in regard to minor changes in corporate structures such as the number of directors, shareholders or shares issued. A senior corporate law clerk will also be responsible for instructing and supervising the corporate stenographers. Corporate clerks develop a vast expertise in provincial and federal corporate procedure. One such clerk we interviewed had worked for twenty-five years in corporate practice and was shortly retiring to be replaced by a young lawyer. The firm felt that it was unable to find a law clerk with corporate knowledge and experience.

6. Law Clerks and Legal Secretaries

There is no clear definitional accord as to the role of the law clerk and that of the legal secretary. It is clear that many legal secretaries exercise skills well beyond those of the stenographer. Indeed, an experienced litigation secretary in one firm may play a more important supporting role in conducting the firm's litigation than someone styled 'litigation law clerk' in the firm next door.

There are some working conditions common to law clerks:

- (a) they generally earn higher salaries than legal secretaries of comparable experience, (b) their maximum salaries appear to be much higher, (c) they have greater independence, (d) they interview

clients, (e) they are allotted specific office space, (f) they have specific and unique job descriptions, (g) they do not generally undertake stenographic duties, (h) they do factual and legal research, (i) they deal directly with lawyers about client problems, (j) they may attend firm meetings or continuing education sessions, (k) they delegate work to secretaries or stenographers, (l) they may be entitled to bonuses based on their billings, (m) they are not entitled to overtime. There was some suggestion among those we interviewed that the difference is often unreasonably based on sex rather than skill. Women, it is suggested, are more likely to be called secretaries because they know how to type and will be required to do their own typing. Men doing work of equal complexity will be called law clerks and will have stenographic assistance.

Our survey of law clerks and legal secretaries indicates that the issue which most concerned non-professional staff in law firms was the issue of role definition. One hundred and twelve of 192 respondents felt sufficiently motivated to answer those questions which required an essay form of response. Of the 112 responses to section 4, 69 gave short answers while 43 gave longer answers requiring a separate sheet of paper. Of the respondents who provided detailed responses, there is a clear indication that the paraprofessionals are more concerned about their status than their economic position. Typically law clerks consider a legal secretary to be below them on the totem pole. We note comments such as "a

law clerk should be trained in the law whereas a secretary should be trained in producing the results of the law clerks' and lawyers' work." Or, "the legal secretary should act only on the instructions of her superior, lawyer or law clerk." Law clerks believe that they are capable of assuming responsibility and of understanding the theory of their work: "Law clerks have much more responsibility, have more knowledge . . . than the legal secretary" and "law clerks must understand why they are doing what they are doing."

Legal secretaries see little difference between the capabilities of clerks and of a secretary: "I don't really think there should be any difference" and "I do not think that law clerks do any more complicated work than do legal secretaries; in fact my experience has been that many secretaries are doing the work of law clerks without the recognition for it."

While one would expect some rivalry between paraprofessionals competing for jobs and recognition within the private law firms, we were surprised at the intensity of the rivalry between clerks and secretaries we found exhibited in the questionnaire. A member of the Institute of Law Clerks who has been trained in England indicated "that an experienced law clerk is an additional producer who has a legal secretary". Graduates of Ontario community colleges stated that law clerks had more ability than legal secretaries and "that law clerks have much more responsibility, have more knowledge, generally can work with little supervision as compared to a legal secretary." Similarly a graduate of Durham College responded "a law

clerk has many more capabilities than a legal secretary especially if they took a course similar to the one I took which included all law subjects and practical experience. At present I find that the legal secretary is taking jobs away from the law clerk." While the attitudes expressed in the questionnaires may reflect the individual respondent's working environment, the apparent conflict between secretaries and law clerks appears to be quite widespread. We recognize that the sample population represents the most opinionated members of the total Ontario law clerk and legal secretary population. Still, there is clearly reflected a desire on the part of law clerks to remain separate and apart and (if at all possible) a clear step above the legal secretary.

C. Survey Results

1. The Survey of Firms

The survey of professional firms in Ontario conducted by the Professional Organizations Committee examined the work functions of legal secretaries, paraprofessionals and articling students in supervised and unsupervised activities. Respondents were asked to indicate for a series of eleven tasks and in nine areas of law which support staff were utilized. For all the tables in this section, it should be noted that firms spending less than 30 per cent of billable time in a given area of law (column headings in the tables) were eliminated from the analysis of work functions for that particular area (column). The rationale for excluding these firms was that support staff were less likely to be trained to execute tasks in a specific area of law if firm activity in that area was minimal. As such, percentage utilization figures could be more accurately assumed to reflect the relative capabilities of the various support staff alternatives.

1.a. Utilization of Non-Professionals by Degree of Supervision

The first set of three tables examined utilization of paraprofessionals, legal secretaries and articling students separately for each of these groups of personnel. In each cell in these tables two figures are reported: the upper figure represents the percentage of firms indicating that they used that type of manpower irrespective of the degree of supervision, while

the lower figure indicates the percentage of firms using that same type of personnel in an unsupervised capacity. It should be noted that there are some doubts as to the reliability of the reported distinction between supervised and unsupervised non-professional manpower. The percentage of firms reporting that they utilized unsupervised support staff was so low as to be somewhat implausible. It may be that lawyers, in answering this question, felt the term 'unsupervised' connoted a lack of responsibility for work performed by their staff, hence the low percentages of unsupervised activity. At any rate, this likely bias in the data makes it preferable to report totals, ignoring the issue of the degree of supervision. The unsupervised figures are reported in the first group of tables for illustrative purposes only.

(i) Legal Secretaries

As indicated in Table X.1, legal secretaries are used least by function (row headings) in negotiations, advocacy and legal research and used most in preparing pleadings, letter writing, filing documents and preparing clients' fees. It is interesting that the tasks for which they are utilized most frequently are those that tend to be routine. Legal secretaries are also involved in interviewing clients, fact gathering, dealing with lawyers and public record searches.

In terms of areas of law (column headings) legal secretaries are used most extensively in family law, wills, estates

and title searching, and to a lesser extent, in litigation. They are utilized least in taxation.

Looking at the use of unsupervised legal secretaries in the same table confirms the areas of utilization just noted, although as expected the percentages in all cells are significantly lower.

(ii) Articling Students

Utilization of articling students, seen in Table X.2, varies more with respect to areas of law than to tasks; that is, within a particular field of law, they are used fairly consistently for all functions. This is to be contrasted with legal secretaries who are used in a relatively function-specific manner.

Articling students are utilized most extensively in family law and litigation, to a lesser extent in title searching, corporate law securities and collections, and least in wills and estates and taxation. As was the case with legal secretaries, the two tasks for which articling students are used least are negotiations and advocacy; however, whereas legal research was one of the tasks performed infrequently by legal secretaries, it is the one for which articling students are used most often.

With regard to the degree of supervision, the data indicate that little unsupervised work is performed by articling students.

TABLE X.1

PERCENTAGE OF FIRMS* USING LEGAL SECRETARIES IN THE FOLLOWING ACTIVITIES

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing Clients	S U	19 9	33 9	20 6	9 4	7 2	5 0	13 2	12 3
Fact Gathering	S U	24 11	46 13	28 10	20 4	15 5	5 0	18 8	14 4
Preparing Pleadings or Legal Documents	S U	36 15	41 8	35 10	25 3	20 4	5 0	23 4	26 6
Letter Writing	S U	55 23	65 16	54 17	37 8	30 7	5 0	42 14	35 13
Filing Documents	S U	45 26	52 19	36 17	32 15	18 9	11 0	34 14	35 12
Negotiations	S U	3 2	1 0	4 1	1 0	2 1	0 0	3 2	2 1
Advocacy	S U	1 1	1 0	2 1	1 0	1 0	0 0	1 1	2 1
Dealing with Lawyers	S U	24 6	19 5	34 10	9 3	7 2	0 0	15 4	14 5
Legal Research and Analysis	S U	3 2	2 1	2 0	2 1	0 0	0 0	2 1	3 2
Search of Public Records	S U	16 6	9 3	18 6	17 3	7 2	5 0	17 4	19 5
Preparing clients fees and disbursements	S U	40 12	47 8	45 10	29 6	19 3	0 0	29 4	29 8
N=71 N=97 N=97 N=873 N=132 N=143 N=19 N=139 N=141									

S = Supervised and Unsupervised

U = Unsupervised only

*Firms spending more than thirty per cent of billable time in each area.

TABLEX.2

PERCENTAGE OF FIRMS* USING STUDENTS IN THE FOLLOWING ACTIVITIES

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing Clients	S U	16 5	5 0	9 2	7 1	14 2	0 0	24 3	16 5
Fact Gathering	S U	22 10	5 1	10 3	11 2	15 3	5 0	33 10	18 6
Preparing Pleadings or Legal Documents	S U	21 3	1 0	7 1	12 2	15 3	5 0	32 4	14 4
Letter Writing	S U	19 5	5 0	9 3	14 1	18 2	0 0	31 11	12 3
Filing Documents	S U	16 5	1 0	10 4	17 5	13 3	0 0	29 12	11 5
Negotiations	S U	12 2	0 0	4 1	1 0	11 3	0 0	17 3	8 2
Advocacy	S U	14 1	0 0	1 0	0 0	8 2	0 0	20 6	9 1
Dealing with Lawyers	S U	18 7	2 1	10 2	11 2	13 4	5 0	26 6	12 4
Legal Research and Analysis	S U	24 7	5 0	12 2	24 4	19 5	11 0	37 10	17 4
Search of Public Records	S U	21 8	2 1	13 5	24 6	17 6	5 0	28 12	7 4
Preparing clients fees and disbursements	S U	12 0	2 1	6 1	6 1	10 0	5 0	15 5	8 1

N=71 N=97 N=97 N=873 N=132 N=143 N=19 N=139 N=141

S = Supervised and Unsupervised
U = Unsupervised only

(iii) Paraprofessionals

The percentage of firms utilizing paraprofessionals is much lower than that reported for either articling students or legal secretaries (see Table X.3). Paraprofessionals are used mainly in two specific areas of law and for two tasks. These are title searching and civil litigation, and filing documents and public records searches respectively. The limited utilization of paraprofessionals suggests that their training qualifies them for fairly specialized tasks.

The amount of unsupervised work performed by paraprofessionals is negligible according to the figures in Table X.3, a result which is consistent with those observed in the two previous tables and which confirms the likelihood of a response bias.

1.b. Utilization of Non-Professionals by Incidence of Employment

The next group of three tables examines utilization of the three groups of non-professional manpower for firms that employ them. The elimination of firms not using a particular type of support staff because they do not employ them will make it possible to determine the extent to which low utilization of a particular type of manpower reflects a relative lack of capability.

Prior to discussing the results, it may be useful to examine the employment pattern of non-professional manpower across firm size and location so as to anticipate the likely changes in

TABLE X.3

PERCENTAGE OF FIRMS* USING PARA-PROFESSIONALS IN THE FOLLOWING ACTIVITIES

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing Clients	S U	5 0	2 0	4 1	14 5	2 0	6 1	10 2	7 2
Fact Gathering	S U	8 3	3 0	4 0	17 5	5 2	7 2	16 7	8 0
Preparing Pleadings or Legal Documents	S U	6 0	0 0	2 1	8 2	8 1	7 3	10 3	2 0
Letter Writing	S U	6 0	2 0	5 1	9 3	6 0	7 2	14 4	5 1
Filing Documents	S U	15 4	4 1	7 2	18 6	14 3	11 6	28 18	8 0
Negotiations	S U	0 0	0 0	0 0	2 0	0 0	2 1	5 2	2 0
Advocacy	S U	0 0	0 0	0 0	0 0	0 0	1 1	2 2	1 0
Dealing with Lawyers	S U	2 1	1 0	2 0	14 4	3 1	7 4	10 3	4 0
Legal Research and Analysis	S U	0 0	0 0	0 0	5 1	3 0	3 1	9 3	2 0
Search of Public Records	S U	17 9	6 1	9 1	24 7	22 6	10 6	25 13	7 2
Preparing clients fees and disbursements	S U	5 0	2 0	4 1	7 1	8 3	6 1	8 3	2 0

N=71 N=97 N=97 N=873 N=132 N=143 N=139 N=141

S = Supervised and Unsupervised

U = Unsupervised only

*Firms spending more than thirty per cent of billable time in each area.

utilization of these personnel. Table X.4 indicates the number of firms employing each of the listed combinations of support staff. It is clear that the elimination of non-employers will affect the percentage utilization of legal secretaries the least since only a minority of firms do not employ one. On the other hand, para-professionals and articling students are relatively less frequently employed, especially among smaller firms, implying that the percentages are likely to rise more for these two groups.

(i) Legal Secretaries

As expected, the utilization of legal secretaries increases slightly for most activities to reflect the omission of the few firms that do not employ them (see Table X.5). As before, they are used primarily for the tasks of preparing documents, letter writing, filing documents and preparing clients' fees. With regard to areas of law, they are used in family law, wills, estates and title searching and less extensively in corporate law securities and litigation.

(ii) Articling Students

The utilization of articling students rises significantly when non-employers are excluded from the calculations (see Table X.6). In fact, except in the fields of wills, estates, and taxation, the percentage of firms using articling students is quite high. Articling students are used more frequently in family and litigation; however

TABLE X.4

DISTRIBUTION OF NON-PROFESSIONAL MANPOWER BY LOCATION AND
SIZE OF FIRM.

	<u>TORONTO</u>				<u>OTHER</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Articling students	4	1	2	0	1	2	0	0
Para-professionals	1	3	1	0	7	1	0	0
Legal secretaries	266	140	5	1	339	204	4	0
Articling students and legal secretaries	31	47	5	1	28	52	11	0
Articling students and para-professionals	0	1	0	0	2	0	0	0
Para-professionals and legal secretaries	44	42	6	0	66	122	8	0
All	9	22	17	21	10	57	37	10
None	121	19	0	1	84	24	1	1

N=476 N=275 N=36 N=24 N=537 N=462 N=61 N=11

TABLE X.5

PERCENTAGE OF FIRMS* WHO EMPLOY LEGAL SECRETARIES AND USE THEM IN THE FOLLOWING ACTIVITIES

	Family Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing Clients	26	21	35	22	9	7	13	12
Fact Gathering	27	23	51	30	23	7	16	13
Preparing Pleadings or Legal Documents	40	34	43	38	25	7	22	27
Letter Writing	60	46	69	57	36	0	41	35
Filing Documents	51	38	58	40	33	14	35	39
Negotiations	5	1	1	4	1	0	4	246
Advocacy	0	1	1	1	1	0	2	3
Dealing with Lawyers	27	9	21	35	12	0	14	16
Legal Research and Analysis	4	2	2	3	2	0	3	2
Search of Public Records	19	5	11	18	18	7	19	21
Preparing clients fees and disbursements	49	33	50	48	31	0	31	42
	N=56	N=81	N=82	N=744	N=108	N=14	N=118	N=114

(Note: includes supervised and unsupervised)

*Firms spending more than thirty per cent of billable time in each area.

TABLE X.6

PERCENTAGE OF FIRMS* WHO EMPLOY STUDENTS AND USE THEM IN THE FOLLOWING ACTIVITIES

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing Clients	60	50	50	45	20	50	0	52	67
Fact Gathering	81	50	66	54	29	46	100	70	70
Preparing Pleadings or Legal Documents	73	0	17	40	42	47	100	73	57
Letter Writing	73	50	51	51	41	56	0	62	50
Filing Documents	54	0	50	50	57	44	0	61	50
Negotiations	53	0	0	20	6	39	0	37	30
Advocacy	60	0	0	10	0	24	0	44	34
Dealing with Lawyers	68	0	0	47	32	47	100	57	46
Legal Research and Analysis	87	50	50	61	74	55	100	83	73
Search of Public Records	73	17	50	66	70	51	100	59	43
Preparing clients fees and disbursements	47	0	0	29	14	38	100	31	27
	N=15	N=6	N=6	N=130	N=34	N=37	N=1	N=52	N=26

(Note: includes supervised and unsupervised)

*Firms spending more than thirty per cent of billable time in each area.

these figures show in addition extensive utilization of articling students in title searching, corporate law securities and collections. Again, except for negotiations and advocacy, articling students are used for all functions, especially legal research and analysis.

Thus, controlling for employment of articling students demonstrates the wide range of activities they are capable of performing. It is clear that their utilization does not reflect task-specific training or knowledge.

(iii) Paraprofessionals

Paraprofessionals are utilized quite extensively by the firms that employ them, as seen in Table X.7, especially for filing documents and public record searches. However, they are still not used for negotiations, advocacy or legal research. By field of law, title searching and civil litigation continue to show extensive utilization of paraprofessionals, while family and criminal litigation also emerge as areas in which paraprofessionals are frequently utilized. Again, paraprofessionals, like other non-professional manpower, are not used in taxation.

(iv) Comparison

Comparing the results across personnel categories, several general trends can be observed: for the tasks of negotiations and advocacy, and the area of taxation, these manpower are not used.

TABLE X.7

PERCENTAGE OF FIRMS* WHO EMPLOY PARA-PROFESSIONALS AND USE THEM IN THE FOLLOWING ACTIVITIES

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing Clients	30	16	21	34	5	19	0	32	35
Fact Gathering	50	16	22	42	18	18	0	43	41
Preparing Pleadings or Legal Documents	20	0	11	22	23	19	0	32	18
Letter Writing	30	5	20	28	18	16	0	37	35
Filing Documents	70	10	27	50	38	24	0	63	53
Negotiations	0	0	0	8	0	5	0	18	18
Advocacy	0	0	0	1	0	2	0	6	6
Dealing with Lawyers	20	5	16	45	12	13	0	33	29
Legal Research and Analysis	0	0	0	16	10	9	0	25	18
Search of Public Records	50	21	37	64	48	20	0	60	47
Preparing clients fees and disbursements	30	11	21	24	12	14	0	23	24

N=10 N=19 N=19 N=246 N=40 N=44 N=2 N=45 N=17

(Note: includes supervised and unsupervised)

*Firms spending more than thirty per cent of billable time in each area.

When employed by the firm, articling students are utilized the most extensively of the three groups, and in the least task-specific manner. They are also the only non-professional group used to any great extent in legal research, which is one of their main functions.

Although legal secretaries are utilized in a variety of activities, a large number of their task assignments are routine in nature. As shown previously, paraprofessionals are highly utilized in a few specific activities. Comparing Tables X.3 and X.7, it is clear that the relatively low percentage of firms using them in the former table reflects the small number of firms employing them. Given the task-specific nature of paraprofessional utilization, it would only be efficient to hire paraprofessionals in large firms, since these firms would generate sufficient demand for particular services to keep a paraprofessional fully occupied. The simplest means of testing this hypothesis is to examine the utilization of support staff by size of firm.

1.c. Utilization of Non-Professionals by Size of Firm

The final set of tables from the firm survey explores the possibility that utilization of non-professionals varies with firm size. It is reasonable to expect that increasing firm size would be associated with increased utilization of support staff. As noted above with respect to paraprofessionals, the demand constraints in small firms with regard to many tasks renders it inefficient to

hire many auxiliary personnel. In fact, looking back at Table X.4, it can be seen that the majority of sole proprietorships and firms with 2-4 lawyers, have only a legal secretary, while another 25 per cent of these firms have two out of three kinds of non-professional manpower. On the other hand, the majority of firms in the other two firm size categories employ articling students, legal secretaries and paraprofessionals. Not only would there be increased employment and utilization of support staff in larger firms but one would also expect greater task specialization within them. Since the larger firms tend to employ all types of non-professional manpower, functions performed by legal secretaries (as the only type of auxiliary personnel) in small firms would be executed in the larger firms by those with relative expertise. By examining work functions of these personnel across firm size, it should therefore be possible to establish the degree of substitutability among these three manpower alternatives.

Listed in each cell of the following tables are the two combinations of support staff most frequently reported by respondents. The incidence of firms not using any non-professional manpower in an activity is indicated by the percentage of zeroes in each cell.

(i) Sole Proprietorships

The high percentage of zeroes in each cell in Table X.9, indicates that the utilization of auxiliary personnel by sole practitioners is not very high. This is not a very surprising result given the low employment of these personnel in small firms.

TABLE X.8

EXPLANATION OF SYMBOLS

- A = supervised articling student
- B = unsupervised articling student
- C = supervised legal secretary
- D = unsupervised legal secretary
- E = supervised para-professional
- F = unsupervised para-professional

TABLE X.9

USE OF NON-PROFESSIONAL MANPOWER BY SOLE PROPRIETORSHIPS*

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing clients	0=62	0=73	0=60	0=69	0=89	0=88	0=92	0=77	0=68
	C=9	C=15	C=22	C=11	CD=D=3	B=C=3	C=8	A=C=E=4	A=8
	A=E=6	D=CE=3	D=7	D=5	C=B=2	CD=D=2		F=3	C=6
Fact Gathering	0=60	0=73	0=47	0=62	0=85	0=90	0=92	0=68	0=60
	B=C=6	C=15	C=32	C=14	C=10	C=6	C=8	C=E=A=6	C=10
	D=A=AC=4	A=CD=CE=3	D=7	E=5	D=3	CD=2		F=AC=3	A=9
Preparing Pleadings or Legal Documents	0=43	0=72	0=62	0=61	0=71	0=77	0=92	0=61	0=61
	C=15	C=25	C=25	C=20	C=24	C=14	C=8	C=14	C=18
	A=11	CD=D=1	CD=6	D=6	CD=A=2	CD=5		E=A=5	A=8
Letter Writing	0=25	0=61	0=32	0=40	0=57	0=67	0=100	0=52	0=51
	C=25	C=25	C=39	C=33	C=30	CD=3		C=18	C=19
	D=17	D=CD=4	D=12	D=9	CD=8	C=24		D=5	D=9
Filing Documents	0=23	0=70	0=46	0=50	0=63	0=77	0=85	0=36	0=50
	C=D=19	C=15	C=28	C=19	CD=15	C=D=8	C=15	C=19	C=22
	E=13	D=9	D=14	D=12	C=11	E=3		D=F=10	D=10
Negotiations	0=85	0=99	0=99	0=92	0=98	0=99	0=100	0=90	0=87
	A=9	C=1	C=1	C=3	A=2	AB=1		A=3	A=6
	B=ABD=CD=2			D=A=CD=E=1				B=ABD=C=E=all=2	D=E=2
Advocacy	0=89	0=99	0=99	0=98	0=100	0=99	0=100	0=90	0=90
	A=9	C=1	C=1	C=A=1		A=1		A=3	A=6
	ABD=2							C=2	C=2
Dealing with Lawyers	0=62	0=88	0=79	0=61	0=92	0=91	0=100	0=75	0=75
	C=11	C=6	C=12	C=16	C=6	C=6		C=5	D=7
	D=6	CD=3	D=CD=E=3	D=CD=5	CD=2	AB=2		A=E=ABCD=CE=3	A=6
Legal Research and Analysis	0=74	0=94	0=94	0=91	0=94	0=97	0=92	0=80	0=79
	A=15	A=4	A=4	E=3	A=3	A=1	A=8	A=8	A=10
	B=6	D=2	D=2	A=2	CD=2	B=2		AB=E=3	AB=3
Search of Public Records	0=57	0=88	0=76	0=64	0=74	0=86	0=92	0=59	0=61
	A=8	E=6	C=6	C=E=9	C=8	F=5	C=8	C=11	C=16
	E=D=C=F=6	F=D=2	E=7	F=5	F=5	E=3		E=8	A=E=6
Preparing clients fees and disbursements	0=45	0=63	0=49	0=50	0=66	0=80	0=100	0=64	0=49
	C=26	C=26	C=33	C=31	C=20	C=16		C=23	C=30
	D=9	CD=D=4	CD=D=6	CD=6	CD=5	D=3		E=3	D=8
	N=53	N=67	N=96	N=466	N=65	N=69	N=13	N=69	N=100

*For firms spending more than thirty per cent of billable time in each area.

TABLE X.10

USE OF NON-PROFESSIONAL MANPOWER BY FIRMS WITH TWO - FIVE LAWYERS*

	Family	Wills	Estates and Probate	File Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing clients	C=60 A=20 C=13	O=79 A=C=7 AC=4	O=61 C=18 A=CD=7	O=64 C=8 E=5	O=83 C=5 A=AC=3	O=72 A=15 C=7	O=100	O=56 A=22 C=6	O=71 A=12 AB=E=6
	O=47 A=C=20 BE=7	O=79 C=11 AC=4	O=50 C=21 A=CD=7	O=50 C=12 E=8	O=59 C=17 A=10	O=54 A=C=15 AB=CE=4	O=83 A=17	O=37 A=19 C=AB=7	O=71 A=15 E=9
	O=47 C=33 A=20	O=54 C=43 A=3	O=50 C=46 CD=4	O=56 C=20 D=4	O=61 C=24 A=10	O=61 C=18 A=13	O=83 A=17	O=37 A=26 C=13	O=66 C=17 A=5
Preparing Pleadings or Legal Documents	O=47 C=33 A=20	O=54 C=43 A=3	O=50 C=46 CD=4	O=56 C=20 D=4	O=61 C=24 A=10	O=61 C=18 A=13	O=83 A=17	O=37 A=26 C=13	O=66 C=17 A=5
Letter Writing	O=47 C=26 A=20	O=46 C=40 AC=7	O=21 C=54 AC=7	O=33 C=33 CD=7	O=44 C=24 A=10	O=43 C=26 A=11	O=83 C=17	O=20 C=21 A=18	O=63 C=17 A=8
Filing Documents	O=27 C=D=20 A=CD=13	O=39 C=29 CD=14	O=14 C=35 D=CD=15	O=40 C=14 E=12	O=34 C=25 A=D=10	O=54 C=15 A=9	O=100	O=22 A=14 C=11	O=57 C=14 D=9
Negotiations	O=80 A=13 C=7	O=100	O=100	O=91 A=4 B=C=CD=E=CE=1	O=95 A=3 C=2	O=87 A=9 C=4	O=100	O=69 A=23 B=F=CF=E=2	O=89 A=5 AB=E=3
Advocacy	O=73 A=27	O=100	O=100	O=97 A=2 E=1	O=98 C=2	O=85 A=9 C=4	O=100	O=69 A=26 AB=5	O=83 A=14 E=3
Dealing with Lawyers	O=53 A=27 C=20	O=89 C=3 AB=AC=4	O=71 C=14 AB=CD=CE=4	O=48 C=15 E=6	O=80 D=A=AC=5 C=3	O=76 A=9 AC=3	O=83 A=17	O=49 A=23 C=10	O=66 A=8 C=15
Legal Research and Analysis	O=67 A=27 C=7	O=93 A=3 AC=4	O=96 AC=4	O=79 A=11 AB=E=3	O=66 A=24 AB=5	O=65 A=24 AB=E=4	O=83 A=17	O=45 A=34 AB=11	O=74 A=20 AB=6
Search of Public Records	O=40 C=A=20 CD=13	O=86 E=4 C=7	O=79 E=11 C=7	O=45 E=14 C=10	O=41 A=15 C=E=10	O=52 A=15 C=9	O=83 A=17	O=35 A=B=10 C=9	O=74 C=8 F=6
Preparing clients fees and disbursements	O=67 C=20 ACE=7	O=64 C=28 A=ABC=4	O=57 C=39 AC=4	O=43 C=35 CD=4	O=61 C=27 AC=5	O=65 C=17 A=9	O=83 A=17	O=47 C=24 A=12	O=71 C=20 A=6
N=15		N=28	N=28	N=358	N=41	N=46	N=6	N=55	N=35

Legal secretaries are employed most extensively by these firms, hence the higher percentage utilization figures in the activities most frequently performed by them, that is letter writing, filing documents, preparing documents and preparing invoices in the areas of family, estates, title searching and litigation.

Articling students are used primarily for legal research and in family law and litigation. They are also involved in negotiations and advocacy, tasks for which neither legal secretaries nor paraprofessionals are used. Paraprofessionals are seldom used in the smallest firms; as expected, they are involved primarily in public records searches and occasionally in civil litigation.

(ii) Firms with 2-5 Lawyers

Compared with the utilization of auxiliary personnel in sole proprietorships, there is greater use of all types of non-professional manpower in the next firm size category (except in the field of taxation) (see Table X.10). The primary source of the increase is in the use of articling students, especially in corporate law, securities, collections, civil litigation and family. As before, articling students are involved most extensively in legal research, but are also utilized in a wider variety of tasks than either of the other two personnel groups.

Legal secretaries, as noted previously, are utilized in preparing and filing documents, letter writing and preparing invoices.

They also appear in these firms to be involved in public records searches, fact gathering, and to a lesser extent in interviewing clients and dealing with lawyers. By field of law, the greatest increase in the use of legal secretaries is in wills and estates.

Paraprofessionals are not extensively utilized, again owing to their relatively low numbers in firms of this size. They are however used more heavily than was the case in sole proprietorships, especially in the fields of title searching and litigation and by function, for public records searches.

(iii) Firms with 6-9 Lawyers

There are four columns (fields of law) in Table X.11 in which the number of firms is sufficiently large to provide meaningful results, regarding the utilization of non-professional manpower, specifically title searching, corporate law securities, collections and civil litigation. In each of these areas of law, there is greater use of auxiliary personnel in firms of this size as compared to either of the two previous firm size categories.

The most interesting result is the declining use of legal secretaries and the emergence of articling students as the most heavily utilized support staff group. In comparison to the utilization figures reported in the previous table the percentage of these firms using legal secretaries is lower for interviewing clients, preparing documents or pleadings, filing documents and preparing invoices. Again, articling students are involved in all

USE OF NON-PROFESSIONAL MANPOWER BY FIRMS WITH SIX - NINE LAWYERS*

	Family	Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Taxation	Civil Litigation	Criminal Litigation
Interviewing clients		C=100	C=100	O=38 AE=17 E=12	O=71 A=22 C=7	O=79 AE=E=A=7		O=42 A=25 B=E=ACF=AE=8	CD=100
		O=100	C=100	O=29 A=21 C=AC=9	O=50 A=22 C=14	O=64 A=D=ACD=CE=AE=7		O=17 A=25 AE=AB=17	O=100
Fact Gathering		O=100	O=100	O=25 A=17 AC=12	O=50 A=14 BF=C=CD=E=E=AE=7	O=64 CD=A=CF=CE=AE=7		O=33 A=42 AB=AE=ACDF=8	CD=100
		O=100	C=100	O=13 C=16 AC=12	O=29 C=22 A=28	O=43 A=28 C=CD=E=CE=7		O=33 A=AB=17 C=AC=ACDF=AE=8	CD=100
Letter Writing		O=100	O=100	O=25 A=12 AC=ACE=8	O=36 A=21 AD=8	O=57 A=E=14 AD=AE=7		O=17 A=34 B=F=AF=C=CF=ABEF=8	O=100
		O=100	O=100	O=71 A=17 E=AB=AE=4	O=100	O=71 A=22 ABEF=7		O=58 A=25 AF=AE=8	O=100
Negotiations		O=100	O=100	O=88 A=12	O=100	O=79 A=14 AB=7		O=67 A=25 AB=11	O=100
		O=100	O=100	O=29 AE=13 AC=12	O=71 A=22 E=7	O=64 A=22 CD=ABEF=7		O=50 A=17 AB=ADF=AC=AE=8	O=100
Advocacy		O=100	O=100	O=25 A=34 AE=12	O=50 A=36 EB=AE=7	O=64 A=29 ABEF=7		O=17 A=33 AB=17	O=100
		O=100	O=100	O=17 E=A=25 AE=13	O=36 A=21 AE=14	O=64 AE=14 A=15		O=17 A=17 AD=AC=B=E=AB=AF=F=AE=8	O=100
Dealing with Lawyers		O=100	O=100	O=42 C=CE=9 A=AE=8	O=57 E=21 D=A=C=8	O=64 AE=14 D=E=A=7		O=50 A=25 C=ADF=AE=8	C=100
		O=100	O=100						
Legal Research and Analysis		O=100	O=100						
		O=100	O=100						
Search of Public Records		O=100	O=100						
		O=100	O=100						
Preparing clients fees and disbursements		O=100	C=100						
		O=100	C=100						

N=0 N=1 N=1 N=1

N=24

N=14

N=14

N=0

N=12

N=1

*Firms spending more than thirty per cent of billable time in each area.

tasks and are the primary ones used for negotiations, advocacy and legal research. Paraprofessionals are utilized more extensively in this firm size category, confirming the hypothesis that demand constraints for the particular services provided by paraprofessionals render it inefficient to hire them except in the larger firms.

A final point worth noting is the increased occurrence in individual cells of combinations, or rather a variety, of manpower, owing to the tendency for firms of this size to employ all three types of auxiliary personnel.

(iv) Firms with 10 or more Lawyers

The trends noted in the previous table are reinforced in Table X.12. Not only are articling students utilized most extensively of the three groups, but paraprofessionals are now more prevalent than legal secretaries. Moreover, there is increased incidence of combinations of personnel involved in specific tasks reflecting the preponderance of firms employing all three types of non-professional manpower. The reported use of all types of auxiliary personnel in certain activities indicates the substitution potential of these manpower alternatives. This substitutability is confirmed by the evidence that functions performed by legal secretaries in the smaller firms are performed by articling students and paraprofessionals in the larger ones.

At the same time several distinctions among these personnel should be noted. The utilization of articling students is by far the least task-specific and, recalling that articling

TABLE X.12

USE OF NON-PROFESSIONAL MANPOWER BY FIRMS WITH TEN OR MORE LAWYERS*

	Family Wills	Estates and Probate	Title Searching & Conveyancing	Corporate Law Securities	Collections (Debtor-Creditor)	Tax-ation	Civil Litigation	Criminal Litigation
Interviewing clients			O=63 AF=12 AEF=25	O=82 E=A=9	O=33 AE=17 A=25		O=50 AE=50	O=100
Fact Gathering			O=50 AE=25 AEF=C=13	O=36 E=18 AB=ABF=C=AE=A=9	O=42 A=25 AE=AB=E=ABE=8		O=50 A=25 ABCEF=25	O=100
Preparing Pleadings or Legal Documents			O=50 CDEF=AE=ACE= ACDE=13	A=27 AE=18	O=33 A=25 AE=17		O=25 A=50 ACE=25	O=100
Letter Writing			O=13 AC=25 AF=6 AE=AE=ACE= ACDEF=13	O=55 A=18 E=AE=ACE=9	O=33 A=33 AE=17		O=25 A=25 C=ACEF=25	O=100
Filing Documents			O=50 AE=25 AEF=ABEF=13	O=18 AE=36 E=18	O=42 A=25 E=17		O=25 BF=CF=all=25	O=100
Negotiations			O=75 AE=25	O=100	O=58 A=25 AE=AB=8		O=75 E=25	O=100
Advocacy			O=88 A=13	O=100	O=83 A=AB=8		O=50 A=25 BF=25	O=100
Dealing with Lawyers			O=50 C=ACE=ACEF= ACDEF=13	O=45 A=18 AB=CE=AE=all=9	O=50 A=25 AE=ABE=all=8		O=25 A=25 C=ACE=25	O=100
Legal Research and Analysis			O=38 A=AE=40 AF=13	O=18 A=45 AB=27	O=50 A=25 AB=17		A=50 AB=ACE=25	O=100
Search of Public Records			O=13 AE=25 F=A=E=ABEF= ACE=13	O=9 AE=64 A=AB=ABE=9	O=50 A=AB=17 B=AE=8		O=25 AE=25 E=ABEF=25	O=100
Preparing clients fees and disbursements			O=38 E=25 ACE=A=EF=13	O=82 ACE=18	O=50 A=25 AE=E=ACE=8		O=75 ACE=25	O=100

N=0 N=0 N=0 N=8 N=11 N=12 N=0 N=4 N=1

students are the primary group involved in negotiations, advocacy, and legal research, reflects the most extensive knowledge of law.

Legal secretaries are involved in a variety of activities, especially in smaller firms in which it is not uncommon to find legal secretaries as the only form of auxiliary personnel. At the same time, many of the tasks performed by them are, as noted previously, those that tend to be routine in nature. Moreover, in the larger firms legal secretaries are replaced by paraprofessionals and articling students in terms of these functions, implying that their role in these firms is primarily secretarial.

Paraprofessionals are utilized for a variety of tasks in the larger firms, yet in smaller firms they perform a narrow range of activities. From this evidence it is possible to conclude that the more extensive utilization of paraprofessionals in larger firms represents the assignment of specific but different tasks to different paraprofessionals, as opposed to any one paraprofessional performing a variety of different activities.

2. The Survey of Paralegals

Having described the utilization of non-professional manpower from the perspective of the lawyers who employ them, it was thought useful as a validity check to determine the work functions of these personnel from their own point of view. A questionnaire was sent to a sample of legal secretaries and law clerks (paraprofessionals). A copy of the questionnaire is appended to this

working paper. Of the 643 questionnaires sent out, 192 responses were received; that is a response rate of 30%. One section of the paralegal survey asked respondents to indicate their task assignments in various areas of law by filling out a table (identical to those previously discussed). Respondents were also required to indicate for each activity the degree of supervision by a lawyer. The possible responses were: worked independently, was supervised loosely, or work was closely checked.

The results are presented separately for legal secretaries and law clerks in Tables X.14 and X.15, respectively. It should be noted with respect to the tables that for each field of law (that is, the column headings in the tables), the responses analysed include only those cases in which the employer was reported to be actively engaged in that area of law. As noted previously with regard to the firm survey results, this procedure allows greater comparability across fields of law since the figures will not be reflecting an unknown element of non-utilization of non-professional manpower owing to lack of activity in the area.

2.a. Legal Secretaries

The work functions of legal secretaries which emerge from this data are remarkably similar to those reported by firms. Looking at the overall results in Table X.14, it is clear that legal secretaries are most often utilized for preparing documents, letter writing, and preparing invoices and to a lesser extent for fact gathering, filing documents and dealing with lawyers. They are least involved in negotiations, advocacy, public records searches and legal research. By field of law, taxation and collections show the lowest utilization

TABLE X.13

EXPLANATION OF SYMBOLS

F	=	Family
W	=	Wills
E	=	Estates & Probate
TS	=	Title Search & Conveyancing
CL	=	Corporate Law/Securities
C	=	Collections (Debtor-Creditor)
T	=	Taxation
CVL	=	Civil Litigation
CRL	=	Criminal Litigation

TABLE X.14

LEGAL SECRETARIES REPORTING THAT THEY PERFORM THE FOLLOWING TASKS

		F	W	E	TS	CL	C	T	CVL	CRL
Interviewing Clients	A	8	9	6	4	-	-	-	5	12
	B	12	11	11	13	13	7	-	14	12
	C	8	17	17	13	9	9	8	11	12
Fact Gathering	A	8	17	11	9	4	4	-	5	12
	B	23	14	17	11	11	4	-	16	18
	C	12	11	14	26	20	13	8	16	12
Preparing Pleadings or Legal Documents	A	12	31	23	11	18	7	8	22	18
	B	19	14	23	11	13	11	8	27	29
	C	8	14	11	26	22	9	8	8	6
Letter Writing	A	12	17	11	7	16	7	17	11	18
	B	8	9	17	20	16	13	17	16	6
	C	27	37	31	30	20	18	-	30	29
Filing Documents	A	4	3	3	-	4	2	-	5	12
	B	4	3	9	-	4	-	-	3	-
	C	27	34	29	33	31	13	17	35	41
Negotiations	A	4	6	6	4	11	4	-	8	-
	B	12	3	3	4	7	4	-	14	24
	C	8	6	6	7	-	2	-	3	-
Advocacy	A	-	3	3	2	-	-	-	3	-
	B	12	3	3	2	7	4	-	14	12
	C	-	-	-	7	2	-	-	-	-
Dealing with Lawyers	A	12	3	6	2	7	7	-	5	6
	B	12	6	9	15	11	9	-	22	12
	C	23	23	20	26	20	9	8	22	24
Legal Research and Analysis	A	4	9	9	9	7	2	-	14	18
	B	15	6	6	11	11	4	8	16	6
	C	8	9	9	9	9	4	-	5	12
Search of Public Records	A	8	3	3	4	4	4	-	5	12
	B	4	9	11	9	11	-	-	11	6
	C	4	3	3	15	11	4	-	11	6
Preparing Clients Fees and Disbursements	A	8	14	20	15	20	9	8	19	29
	B	12	17	17	20	18	11	-	22	12
	C	15	23	14	17	9	11	8	11	6

N=26 N=35 N=35 N=46 N=45 N=45 N=12 N=37 N=17

A = work is closely checked; B = work is occasionally checked; C = work more or less independently.

of legal secretaries while the highest figures occur in litigation, real estate and, to a lesser extent, wills, estates and family law. Generally, the results indicate that work functions of legal secretaries tend to be task-oriented; that is, they do not perform all tasks with any given area of law, but rather are involved in specific tasks in most fields of law.

With regard to the degree of supervision, the results are difficult to generalize since the responses do not exhibit any clear patterns. However, a few observations can be made. The majority of respondents indicated that they work independently for the task of filing documents. The percentage of legal secretaries involved in dealing with lawyers increased as the degree of supervision decreased. A similar result was obtained in the task of letter writing and to a lesser extent in interviewing clients and fact gathering. For the other functions (row headings), responses were relatively evenly distributed across supervision levels. On the whole, however, legal secretaries reported significantly less supervision of their work than the firm survey results indicated was being provided to them.

2.b. Law Clerks

The tasks most often performed by law clerks, as indicated in Table X.15, are letter writing, filing documents, preparing invoices and most significantly, public records searches. Many of these respondents reported that they were also involved in interviewing

TABLE X.15

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LAW CLERKS REPORTING THAT THEY PERFORM THE FOLLOWING TASKS

		F	W	E	TS	CL	C	T	CVL	CRL
Interviewing Clients	A	10	10	6	4	3	3	-	13	7
	B	12	6	11	17	12	5	-	14	15
	C	10	10	11	29	5	17	13	16	11
Fact Gathering	A	4	3	5	3	2	2	-	9	7
	B	10	5	8	8	3	-	4	14	19
	C	18	10	18	40	25	18	13	20	11
Preparing Pleadings or Legal Documents	A	8	6	3	6	7	5	-	19	7
	B	14	3	8	18	10	7	-	22	7
	C	14	11	14	26	12	12	9	8	7
Letter Writing	A	6	6	2	6	2	-	-	13	7
	B	12	5	8	8	10	8	4	8	4
	C	18	11	21	44	23	20	13	27	22
Filing Documents	A	4	3	2	6	3	3	-	9	4
	B	4	2	8	10	8	7	-	8	4
	C	36	8	22	39	18	17	13	33	22
Negotiations	A	12	5	3	6	3	5	4	14	11
	B	6	2	8	22	7	7	-	9	11
	C	4	2	2	11	-	10	4	11	-
Advocacy	A	8	2	2	4	3	5	-	9	11
	B	4	2	3	7	3	7	4	9	11
	C	4	2	5	6	-	5	9	6	-
Dealing with Lawyers	A	12	6	3	3	2	8	4	13	11
	B	12	2	5	13	10	7	4	17	11
	C	8	5	13	47	15	12	4	13	11
Legal Research and Analysis	A	14	3	6	13	3	8	4	16	11
	B	6	3	5	18	13	3	-	17	11
	C	6	5	11	15	12	7	9	8	7
Search of Public Records	A	2	3	3	6	2	3	-	5	4
	B	-	3	5	8	8	3	-	3	4
	C	26	8	22	47	17	13	9	23	19
Preparing Clients Fees and Disbursements	A	10	6	11	13	12	10	4	16	19
	B	12	2	10	13	12	7	4	11	11
	C	8	14	10	22	12	12	9	13	4

N=50 N=63 N=63 N=72 N=60 N=60 N=23 N=64 N=27

A = work is closely checked; B = work is occasionally checked; C = work more or less independently.

clients, fact gathering, preparing documents and dealing with lawyers. By field of law, law clerks are used most often in title searching and civil litigation, to a lesser extent in family and criminal litigation, and also in corporate law securities, collections and estates. They do not report much activity in the tasks of negotiations, advocacy and legal research or in the areas of tax and wills.

These results are consistent with those obtained from the firm survey except as regards the degree of supervision: much more independent activity is reported in the paralegal than in the firm survey. A majority of respondents indicated that they worked independently in searching public records, filing documents, fact gathering and letter writing. The highest reported incidence of work being closely checked occurred in the tasks of legal research and preparing invoices. With regard to fields of law, work is most heavily supervised in family and litigation and least supervised in title searching, corporate law securities, collections, and estates.

2.c. Conclusion

The paralegal survey confirms the firm survey results regarding the work functions of legal secretaries and law clerks. However, the reported degree of supervision of these personnel differs markedly between the two surveys. It has already been noted that the amount of supervision is likely to have been

overestimated in the firm survey owing to notions of lawyer responsibility for all work performed. At the same time, legal secretaries and law clerks would tend to credit themselves where possible with more responsibility or independence rather than less, thereby exacerbating the discrepancies in the results. Moreover, the lack of symmetry in wording on the two questionnaires may account for part of the reported difference in levels of supervision. Whereas the firm survey questionnaire asked lawyers to indicate if supervised or unsupervised manpower performed a variety of tasks, respondents to the paralegal questionnaire were asked if their work was closely checked, occasionally checked, or if they worked independently. The terms 'unsupervised' and 'work independently' may be interpreted very differently in the sense that a lawyer may feel he is operating in a supervisory capacity even though the employee is functioning independently. As such, it would seem that the paralegal survey results are preferable as a means of indicating the amount of independent activity performed by legal secretaries and law clerks.

D. Law Clerks in Great Britain

The law clerks of the English system may be divided into three distinct groups. The first type of clerk is the Solicitor's articulated clerk who is fulfilling a professional apprenticeship before being called to the Bar. As a student group this population of clerks is of little concern to this study. The second type of clerk is the Barrister's clerk. The nature of the split profession in England has created a unique role for the barrister's clerk. Unlike the conventional paralegal this clerk spends little time on legal matters but rather acts as a personal manager for the Barrister. He arranges all the professional affairs of his principal and acts as a middleman between solicitors and his employer. Because of the unusual nature of this role the barrister's clerk is also of little comparative value in any study of the role of law clerks in Ontario.

The third, and most relevant, type of clerk is the solicitor's clerk, often referred to as a legal executive. These individuals are career clerks who, depending upon their experience and employer, may perform under a solicitor's supervision all the tasks of a qualified solicitor. Solicitor's clerks have had a long history in the British system. By the middle of the nineteenth century the employment of clerks by solicitors was the prevailing practice.¹⁵ In modern times the ratio of solicitors to legal executives has reached approximately one to one.¹⁶ The solicitors' Managing Clerks' Association was formed in 1892 for members with at least ten years experience in a solicitor's office.¹⁷ The Association never attained a membership greater than 2,600, although the number

of employed clerks increased until the outbreak of World War II. After the war the increased demand for white collar workers and increased access to a legal education led to a decline in available clerks. The Law Society attempted to join forces with the Association to promote a renewed interest in the career and a certificate system was introduced to certify the general body of law clerks on the basis of examinations. Any unified effort was undermined by a disagreement over the institution of a minimum salary in 1956. In 1957 a committee was set up which ultimately developed the concept for a society which would be formed for the training of solicitors' staffs. The committee decided to apply the term "legal executive" to the newly trained staff. In early 1963 the Institute of Legal Executives was formed from the Managing Clerks' Association. The membership presently stands at 15,005.¹⁸

Members have status as either students, associates or fellows. In each case, preparatory courses are completed at a polytechnic (analogous to our community college) or by correspondence. Fellowship status requires considerable academic achievement (successful completion in three "A" level subjects, roughly equivalent to our first year of university). Fellowship standing requires three years of qualifying employment together with successful completion of three examinations selected by the student from a list of options (conveyancing, equity, probate and successor, contracts, commercial law, torts, criminal law and others).

Legal executives play an extensive role in litigation. One may specialize in civil, domestic or criminal work. In the course of a matter, a legal executive may advise the client and

supervise the matter through every level - even through an appeal to the House of Lords. He or she conducts interviews with witnesses, prepares pleadings, summonses and affidavits. When a matter goes to trial, the legal executive often instructs the counsel. He collects the relevant data and documents for the court appearance and assists in preparing the case to be heard. If the matter is not going to trial, the legal executive acts in much the same manner collecting data for preparation of advice.

The legal executive is of great value in conveyancing. He usually offers the client general advice and is often charged with drafting all contracts, conveyances, leases and charges, freeing the solicitor from these more routine functions. He is also trained in the area of law surrounding these functions and is able to give advice on questions respecting title, easements, charges, boundaries, drainage rights and rights of way. He may also advise on leases, both private and commercial, as well as tenancy, expropriation and tax matters. He assists other professionals such as surveyors and architects in land development matters.

A legal executive can draft a will and a trust document or advise in their preparation. He can also be useful in obtaining grants of probate and in representing a client in probate matters. His drafting duties often extend to the point of making him an estate planner, as he must take into account the effect of tax legislation on the wishes of a testator. He can also administer the estate of a deceased person for which he must be familiar with practice and procedure at probate and questions as to the taxation of an estate.

Legal executives draft articles of incorporation or association and act in an advisory capacity towards directors, secretaries, and other members of a company. They also advise companies as to the rights of shareholders and give information on the requirements of the various legislation, as well as information about partnership and bankruptcy matters.

Unadmitted staff (that is, law clerks who are not members of the Institute) are generally less well-trained and may therefore occupy positions of somewhat less responsibility.

Although legal executives appear to perform the same tasks as solicitors in many cases, there are restrictions on their activity. To begin with, all their work is done in the name of the solicitor. In addition, there are certain functions and court appearances which are reserved for the solicitor. Fellows have particular privileges relating to their duties which are not shared by non-Fellow "legal executives". However, as long as a legal executive does not hold himself out to be a solicitor, he can operate as a legal advisor in almost any field and can carry on a correspondence on behalf of a client. He cannot, however, take any steps leading to litigation, prepare a document under seal, or take out probate. These restrictions, set out by The Solicitors Act 1974, s.20, 22, 23, operate as a bar to most forms of independent practice.

The Institute itself recognizes that there would be great difficulty in monitoring independent practice by legal executives,

and therefore is not eager to end the current solicitors' monopoly on certain legal practices (although some Institute members feel that they should be accorded practice rights). The Council of the Institute recognizes this feeling as a natural outgrowth of the fact that legal executives are not accorded the recognition that should result from their responsible activities. However, the Council feels that the Institute should seek its recognition as a part of the legal profession rather than in opposition to it.¹⁹

E. Recruitment of Law Clerks in Ontario

Our interviews indicated that legal secretaries, insurance adjusters and English legal executives are the most attractive candidates for recruitment to positions of law clerks. The graduates of community college law clerk programs apparently hold rather less appeal. Communication skills and experience in a specific area of legal work are apparently important selection criteria. Desire for self-improvement and the ability to assume responsibility were also important.

Undoubtedly the most common source of law clerks is the legal secretary who has been the loyal and hard working employee of the firm. This allows the legal secretary to earn more money and to perceive that there is some progress through the ranks. From the law firm's point of view only a minor personnel decision has been made. No new and untried personality has entered the office. A legal secretary will have the confidence of the firm. In turn, he/she appreciates the importance of good work in the office. He or she will generally have had thorough exposure to one area of law and will be able to add to her expertise quickly.

The second significant area of recruitment is the English legal executive. Until recently, there was been an influx of English legal executives seeking economic advancement by immigrating to Ontario. These experienced law clerks or legal executives have been actively recruited by a number of Ontario law firms who have either advertised in England or sent a lawyer and in some instances a law clerk to England to interview prospective recruits.

A number of law clerks have obtained experience in smaller communities, and have then been recruited by Toronto's law firms where the demand and salaries for law clerks is higher.²⁰

Ontario law firms are interested in recruiting law' clerks who have both knowledge and experience in specific areas of the law. Specific personnel requirements will encourage law firms to seek out clerks with unique training or experience. One law firm in Toronto has hired as a law clerk a woman with graduate training in planning and development to work in its municipal and administrative law department. Real estate clerks are recruited from registry and land title offices while many litigation clerks have had previous experience with the Ontario Provincial Police or municipal police departments. Former insurance claims managers and adjusters are considered attractive candidates for civil litigation positions, particularly where personal injuries work is involved. Another large Toronto firm hired as a law clerk a claims manager with twenty-three years experience. He handles over three-hundred active files. Some Ontario firms have hired graduate lawyers with foreign law degrees who are not eligible to practise in Ontario either because they do not fulfill the Law Society's citizenship requirements or have not practised in their home country for five years and hence cannot be called to the Ontario bar under the existing rules. Graduate lawyers from other jurisdictions have been employed as law clerks after failing to pass the Law Society's transfer examination. These individuals are comparable to English solicitors who have chosen not to obtain their practice certificates.

As the number of law clerks in the province has increased, so has the recruitment of experienced law clerks between firms.

Footnotes

1. Lawyers in an Open Society, Address by the Honourable Otto Lang, Minister of Justice and Attorney General of Canada to the Canadian Bar Association, Queen Elizabeth Hotel, Montreal, Quebec, August 28, 1972.
2. See I.B. Cowie and Dalhousie Legal Aid Services, The Legal Paraprofessional in Canada - A Pilot Training Scheme - 1972, Dalhousie Legal Aid Service, Halifax, N.S. pp. 1-2.
3. We often have occasion during this paper to remark that some unknown percentage of persons labelled 'legal secretary' by private law firms also perform tasks closer in kind to the work of lawyers than to that of legal stenographers. A person called a litigation secretary in one firm might well be a law clerk in the firm next door. On the spectrum of "law jobs" some legal secretaries are quite likely doing work rather more complicated than some law clerks.
4. This list draws on a broader definition in Statsky, The Education of Legal Paraprofessionals' Myths, Realities and Opportunities (1971) 24 Vanderbilt L.R. 1083.
5. William Statsky who has written and lectured extensively in this area has an old chestnut he relates at conferences about the A.B.A.'s 'liberated' lawyer - the fellow who at age 35 hires one paralegal and is thereby able to delegate one billable hour per day. Not only does he thereby "liberate himself" for that billable hour but he also enhances his personal wealth by some \$300,000 by age 65. Professor Statsky referred to this A.B.A. rationale at the National Conference on Legal Aid held in Levis, Quebec in May, 1974.
6. The language of 'gestation' and 'take-off' is borrowed from Haemmel, Paralegals/Legal Assistants, 11 American Business Law Journal, (1973-74) 103.
7. For further discussion of this reluctance see supra note 4.
8. Professor Reiter is conducting a federally funded study of the costs of land conveyancing across Canada.
9. Reiter defines a real estate firm as one handling the purchase and sale of single family dwellings, condominiums and small commercial properties.

10. Professor Reiter told us that in the Bathurst-College area of Metropolitan Toronto a client may be charged as little as \$100 for a simple residential conveyance.
11. Gerald M. Rosberg, Lawyers and Paraprofessionals (unpublished, August, 1977: copy in possession of F.H. Zemans).
12. American Bar Association Special Committee on Legal Assistants, The Training and Use of Legal Assistants: A Status Report (American Bar Association: Chicago, 1974).
13. We discuss below the relationship between law clerks and legal secretaries (Ch. X.B.6).
14. One large Toronto firm has three full-time investigators who are separately incorporated, billing the retaining lawyers \$22.00 per hour for their services.
15. Johnstone and Hopson, Lawyers and Their Work: An Analysis of the Legal Professions in the United States and England, (Bobbs-Merrill: New York, 1967) 400.
16. Id. at 401.
17. Id. at 405.
18. Institute of Legal Executives of England, Memorandum of Evidence to the Royal Commission on Legal Services (London: 1977) 49.
19. Id. at 62.
20. See Part C of this chapter.

XI Training Law Clerks

A. In Ontario

1. Introduction
2. In-House Training
3. The Community College Programs
4. Other Training Programs

B. In the United States

Footnotes

XI. Training Law Clerks

A. In Ontario

1. Introduction

In a subsequent section, we attempt an overview of the planning problems associated with the training of paralegal personnel. In this part, we describe the existing training programmes in the principal categories: (1) in-house training in law firms; (2) the community college courses; and (3) the Institute of Law Clerks program. Thought has elsewhere been given to utilizing the resources of the law schools,¹ the universities² and independent bodies.³ It will be noted in the material in this section that there is no unanimity of direction in existing training programs. While some programs value a general understanding of the legal process forming the basis of considerable additional on the job learning, others concentrate on a very task-specific form of training which requires little supplemental professional formation. Every point along the spectrum between these two extremes is also occupied.

2. In-House Training

Most paralegals in Ontario have been trained on the job. In fact, the immediacy and intimacy of the in-house training setting made it the most popular method of training law clerks both with the lawyers and law clerks that we interviewed. This situation has resulted from a number of factors. First, very few academic programs existed for training law clerks until quite recently.

Secondly, the informality and flexibility of the in-house training structure is very much in tune with the present development of the legal paraprofessional, in which employers wish to determine the individual capacity of each employee to "handle the work". As many paralegals were originally legal secretaries, their evolution has been totally controlled and dominated by their employers' perceptions of their capacity to assume more work. Once the new paralegal demonstrates some competence in a particular area his employer will slowly feed this individual more responsibility in that area.

Law office programs for training of law clerks are generally evolved in response to specific needs. Some lawyers whom we interviewed indicated that they are prepared to expend considerable amounts of time on the short-run training of paralegals as they believe that they will have a substantial long-run pay-off. The lawyer clearly hopes that by training a law clerk whom he can trust, his own time will be used more economically. A lawyer who had trained several law clerks in Surrogate Court practice stated that he had spent twelve nights over a three week period training a law clerk in the specific skills necessary for her to be effective in administering estates. Only after this intensive introduction and a further two months of direct supervision was the lawyer satisfied that the law clerk had reached a satisfactory level of work product.

Often law clerks have had previous experience in working in the Registry Office and merely receive training in the specific office routine. Investigators who are experienced fact-gatherers are given close instructions during their early months in handling litigation matters. Experienced corporate secretaries who gradually develop the responsibilities of a corporate clerk have received on the job training for a lengthy period of time.

Many law clerks have devised their own training programs by using available firm precedents, bar admission course materials and any available lawyer. An intelligent and aggressive employee gradually gathers the expertise and confidence that his caseload requires. The immediacy of the problem and the need to provide service to clients stimulates both the law clerk and his employing lawyer to explain, demonstrate and supervise.

The in-house training of law clerks is in many ways comparable to the early apprenticeship or clerking method of training lawyers. The only difference is that there is no outside evaluation or certification of the law clerk who depends totally on the assessment and evaluation of his employer. The desire for more objective and universal forms of testing has been the motivating factor for the introduction of the Institute of Law Clerks "associate" and "fellowship" examinations. (See Chapter XIII)

There is a considerable variation in the "in-house" training programmes both between law firms and between departments within larger law firms. Lawyers are recognizing that by delegating tasks to law clerks they can make more effective use of their time. Law clerks are being included in seminars provided by senior lawyers for law students and younger lawyers.

Some law firms employing a number of law clerks use a senior and experienced law clerk to train a more junior legal assistant. Training manuals and job descriptions are prepared by the experienced employee who outlines the specific tasks that the junior paralegal is expected to fulfill. The identification of specific tasks and the recognition that these tasks may be repetitive allows the training to take place with little or no input from senior lawyers. Supervision will be conducted by both lawyers and law clerks.

A number of advantages to the firm exist in in-house training. The program can be carried out informally. It can be flexible and job specific. The job specific aspects reduce employees' mobility because the assistant will be trained in the specific system of the employing law office. The disadvantages of an in-house training program include the high cost to the firm if a lawyer must act as a trainer. The high rate of employee turnover will also greatly increase the cost of training programs. The firm will therefore develop a vested interest in retaining the services of the skilled and successful law clerk.

Some form of in-house training has proven necessary for all new legal assistants whether or not they have been formally trained. Both the employer and the employee substantially benefit from a job specific in-house training program .

3. The Community College Program

In response to the perceived needs of commercial and four year high school graduates, Ontario established a community college system in 1965.⁴ The twenty-two community colleges are oriented toward "establishing programs of study which will be applied in nature, i.e. oriented toward meeting the unique and dynamic demands of future technologies, occupations and communities."⁵ A community college attempts to provide courses not suited to the secondary school setting to meet the needs of secondary school graduates as well as adults and out-of-school youth whether or not they are secondary school graduates. Community colleges attempt to interact "with representatives of business and industry, professional and licensing associations, social and public agencies and other colleges and continuing educational centres of the area for enhancing the quality, relevance and social effectiveness of the college programs and services."⁶

At present, some form of training for law clerks is provided by ten community colleges. These programs developed in response to expressed needs of the legal profession for

trained law clerks and the community advisory committees' belief that career opportunities were available. The first community college paralegal training program was offered in Ontario in 1969 by Fanshawe College. In 1971 five colleges offered law clerk programs and this had increased to ten by 1976. The interest in law clerk training increased as programs were made available. The full-time enrollment in law clerks and legal administration courses was:⁷

1970-71	90
1972	96
1973	257
1974	346
1975	500
1976	473

There appears to be considerable demand for such programs. Three community colleges we studied received 500 applicants for 160 positions for the academic year 1976-77.⁸ It is not clear that the applicants' enthusiasm is subsequently justified by the job market.

Although early graduates from the program were successful in finding law related jobs, such placements cannot be found for all current graduates. As well, law firms may in fact prefer to look to other sources for employees, such as English legal executives, competent secretaries, retired policemen, bank managers, insurance adjusters, etc.⁹ Law firms are wary of hiring a community

college graduate who may be as young as eighteen and totally inexperienced. As well as being no guarantee of employment, the community college diploma is not formally required to do the work of the law clerk. A person contemplating his/her future might well be concerned that the two or three years spent on formal training would prove of uncertain utility.

The minimum requirement for entry into a legal assistant program is Grade 12. It is generally possible to admit all qualified applicants into the programs. There are a limited number of applicants with some university background. Fanshawe College for example offers a one year program for university graduates which is fully enrolled at twenty-five per year. Typically, the community college program attempts to transform a seventeen year old high school graduate, with a C or B average, into a nineteen year old with sufficient skills to be employable in a law office. This is a substantial task.¹⁰ Students often require remedial work in communication skills and mathematics. The inability of students to meet the limited requirements of these programs results in about a 50% attrition and failure rate.¹¹ It is difficult to determine if this high rate is due to the difficulty of the courses or the quality of the students. In either case, the teachers of the program admit that a number of their graduates are not suitable to assume law clerk responsibilities in Ontario law firms.¹²

The present two-year / four-semester programs consist of basic core subjects such as real estate, property, corporations, civil procedure, creditors' rights and estates. The Institute of Law Clerks submits to each community college a syllabus for its associate status examinations and all colleges contacted claimed to cover this material. The lecture method prevails with some emphasis on labs in which students attempt to deal with simulated situations. About twenty-five to twenty-eight course hours per week appear to be the norm. There are no basic texts for the courses and instructors rely heavily upon statutory material, articles and Bar Admission Course material.¹³ There is a need for more sophisticated teaching materials. The practical nature of the training would require that considerable effort be expended to keep materials usefully up to date.

Students are graded by term tests and assignments. The assignments cover such practical matters as preparing documents and simple litigation pleadings. The tests examine the more general theoretical areas such as "what is a tort?". Some community colleges include laboratory work which is assessed on a pass/fail basis. Despite concern with the students' literacy skills, examinations generally are in the form of multiple choice or short-answer papers. Some graduates have indicated that the examinations are too easy and that students are given too many opportunities to correct failing assignments.¹⁴ The programs are structured to take the student from general education courses such as "Judicial

Process" to more practical subjects such as Wills, Trusts and Surrogate Court procedures.

The community colleges have begun to recognize the need for clinical training and have introduced field placements in law offices, trust companies and government offices for students. Law firms and provincial departments have cooperated in these placements. Although the colleges are evaluating their field placement programs, they have not determined an optimal clinical teaching schedule to provide both continuity of the work experience and a valid educational experience. It is hoped that clinical placements will also introduce students to permanent jobs. There are no statistics on this aspect of field placements.

Concern has been expressed about the quality of the field placements with respect to the lack of continuity, poor supervision and unclear expectations on the part of both students and employers. Fanshawe College has attempted to overcome this problem by using a system of twenty-four months of continuous education, including two four-month semesters of continuous field work. It is unfortunate that more sophisticated training methods have not been developed to bridge the obvious gap between the future employer and the law clerk in training.

The Ministry of Colleges and Universities, as the overseer of the community college system, has undertaken to establish guidelines for paralegal courses offered through the

colleges. The process used has been the formation of two committees. The original committee, established in 1974 included representatives from the Law Society, the Ontario and Canadian Law Reform Commissions, the Canadian Bar Association, the Institute of Law Clerks, "Store-front" legal aid programs, the Attorney General (Ontario), the Solicitor General, the Ministry of Colleges and Universities and the colleges. A smaller, more workable, committee has been formed from the major principals: The Law Society, the Ministry, the Institute, the Bar Association, and the colleges. The committee has had a study commissioned on the activities of law clerks. The Ministry hopes that from the work of this committee, minimum standards will be set for all paralegal courses throughout the province. The committee has been considering the possible accreditation or certification of law clerks.

Community college programs require teachers with considerable expertise in legal theory as well, and more importantly, with practical legal experience. The present full-time teaching staff is made up of an interesting mixture of qualified Ontario solicitors, law school graduates who are often not qualified to practice in Ontario and experienced law clerks. It is the recruitment policy of most community colleges to hire staff on the basis of their practical experience as opposed to academic qualifications.¹⁵

Teachers within the curricula are governed by the collective agreement negotiated for all community colleges' staff.

Experienced lawyers are paid between \$19,000 and a maximum of \$26,000 per year. An experienced lawyer will be taking a considerable cut in income to teach at a community college but receives the alleged benefits of a less onerous work schedule, some time to do consulting work and the college holidays. These considerations make community college teaching positions interesting for the legal practitioner who enjoys teaching and wishes a break from the pace of private practice. Although course content perhaps lacks the intellectual challenge of law school courses, the instructors we interviewed were genuinely interested in the clerks and legal secretary programs and were committed to teaching careers.

Tuition at community colleges is considerably lower than at an Ontario university. Student fees are in the area of \$370 per annum for both Canadian citizens and landed immigrants. The cost of books is negligible. Students of the community college system are eligible for Ontario Student Assistance Program loans. The cost of the paralegal training programs to the province is therefore considerable. In 1972, the tuition fees collected represented less than 10% of actual operating costs. The province is bearing almost the total cost of the programs.

To evaluate the effectiveness of the community college training programs, we briefly examine the data. According to the Ministry of Colleges and Universities, graduates of the law clerk programs from 1972 to 1976 have had the following job patterns:

Further education:	Other community colleges	5
	university	11
	other school	1
Related work ¹⁶		237
Unrelated work		47
Homemaker		2
Seeking work ¹⁷		18
Not seeking work		3
Unknown		94
		<hr/>
	Total	418

If we can assume a similar distribution of the non-responding graduates, then almost 70% of graduates have had related work (subject to the discretionary use of the term related work). These figures must be read with some skepticism as the respondents represent only 25% of the total of 1,972 graduates during the period analyzed. Our case studies have shown few community college graduates among the clerks interviewed. There is as well a reluctance among potential employers to hire graduates of such programs unless all alternate sources have failed to produce a suitable employee.

Fanshawe College has recently done an analysis of its graduates between 1973 to 1976. In this period they had sixty-five graduates of their two-year program and forty-nine graduates of their one-year program. Of the graduates of the two-year program, 60% found career-related work on graduation. However only 41.5%

(27 individuals) were still holding career-related jobs in 1977. Some graduates criticized program administrators for not being more candid with them about job opportunities and wages. They found that the job market was tight and that it was difficult to develop a paralegal career based on their training. They felt deceived because they had been informed that they could make a career out of their jobs and that a variety of positions would be available to them. However, once in the working world, many graduates found that such opportunities were not available.

4. Other Training Programs

There are a number of settings in which a practising law clerk can upgrade his legal knowledge. The most sophisticated of these programs is sponsored by the Institute of Law Clerks which offers evening programs in affiliation with the continuing education departments of the community colleges. Course content is outlined by the Institute in a syllabus sent to the colleges who are responsible for hiring a lawyer to teach a course structured by the college. The lack of standard technique and the structure of the Institute's syllabus have created a number of problems including complaints that the scope of examination of material was not covered in the lectures.¹⁸

Full-time students of the community college programs are encouraged by the Institute and by some of the colleges¹⁹ to write the Associate Examinations of the Institute. Pass/Fail

figures are published in the Institute's Newsletter and listed according to the college at which the exam was written.

The Institute is presently preparing a Fellowship course which will be administered on a correspondence basis to allow graduates with five years of law office experience to qualify as "Fellows" of the Institute. The course will cover the areas of contracts, partnership, torts and conveyancing and is being set by Ontario law professors and lawyers. It will be published by a law book publisher. There is undoubtedly a demand and a need for improved texts for training legal assistants similar to those that have been developed in the medical profession.²⁰

Prospective Fellows will be required to pass two fellowship examinations in addition to their five years of qualifying employment. The Institute states that courses are designed to test law clerks at a level comparable to the final year of law school. The Institute courses have virtually no effect on professional status or income but many law clerks write the examinations purely for personal development and status within the Institute. Some clerks find that the additional qualifications gives them some recognition and improved work experience within their law firm. The Institute of Law Clerks wishes to present an image of high standards to the legal profession so that if certification is granted, the Institute will be considered as the appropriate certifying body. The Institute's courses stress the

theoretical rather than the practical and are designed to give the law clerks an overview of the subject matter by means of a survey of the significant cases, statutes and regulations. Courses attempt to broaden the law clerk's perspective by giving him a generalized framework of the substantive law.

Law clerks may also avail themselves of continuing education opportunities made available through York University, University of Toronto, The Law Society of Upper Canada, The Metropolitan Toronto Legal Secretaries Association and the Toronto Community Law School.

B. In the United States

"The response to the challenge of training legal paraprofessionals is in a state of disarray." / 21

As the role and task of paralegals develop, so do the methods of training. Many legal academics hold that unlike the paraprofessional working in medicine or dentistry there is little point in training a paralegal to perform specific repetitive tasks. They state that the solution to legal problems are not as easily broken down into systematic tasks as in the more exact sciences. This view has not had universal acceptance among paralegal trainers. A significant segment of the legal profession holds the view that paralegals, particularly in the private sector, do perform recurring routine tasks. These trainers have created the "systems approach" to training the legal assistant,²² concentrating on perfecting standard form step by step responses to common problems.

In August of 1968 the American Bar Association House of Delegates recommended the creation of a special committee to study:

- "(a) the tasks which could be performed by legal assistants,
- (b) the nature of the training which would be required,
- (c) the role to be played by the legal profession in providing such training,
- (d) the desirability of recognizing competence and proficiency of legal assistants, and
- (e) all appropriate methods of developing, encouraging and increasing the training and utilization of legal assistants." / 23

Since its inception the ABA Special Committee on Legal Assistance has created a standardized curriculum for legal secretaries, legal assistants and legal administrators in the private sectors.²⁴ The Committee has subsequently established guidelines for the approval of legal assistant education programs.²⁵

Although the ABA Special Committee has no specific jurisdiction or power, the effects of its actions cannot be overemphasized. ABA involvement has provoked the creation of more structured paralegal programs and a movement away from law office oriented informal training. Prior to creating outlines for the approval of programs in 1973, the ABA commissioned a study which indicated that at that time, only 33 formal programs existed for training legal assistants.²⁶ All of these programs have been created since 1967 when the first paralegal training program was created in the United States. Three were added in 1970, seven in 1971 and twenty-two in 1972.

Less than 2,000 students were enrolled in the thirty-three programs, and they were generally following the proposed ABA curriculum of 1971. Fifteen of the thirty-three programs were affiliated with the two year college program leading to an arts degree. Legal specialty courses were taught primarily at night school. Fifteen of the thirty-three programs were affiliated with the four year colleges and of these, only three led to a baccalaureate degree. Sixteen of the programs were

part of college business programs, while six were administratively connected with a law school. Seventeen programs were connected or assisted by local bar associations and only one-third of the programs offered any type of clinical or internship experience.

Following the publication of the ABA Committee's guidelines for approval of paralegal training programs, many new programs were instituted. By August 1975 130 had met the ABA requirements.²⁷

The ABA guidelines and curriculum are relevant to Canada because of their current wide application. The curriculum envisages two categories of graduates: the legal assistant and the legal administrator. Both the legal assistant and legal administrator must take the same first year program. The legal administrator must study for an additional two years to be trained as a law office manager.²⁸

The American Bar Association will approve legal assistants programs at law schools, four year colleges and universities; two year colleges; technical schools and proprietary institutions.²⁹ Programs must have been operational for two years and have graduated students before being approved. The program must be at a post-secondary level designed for students who have a high school diploma or equivalent. The ABA guidelines require that programs should qualify graduates to work in "public and private law practice and/or corporate

or government related work".

Programs successfully meeting these standards offer traditional forms of formal education. The two approaches advanced as alternatives to the traditional method, the "new careers" approach (offered to low-income persons to train them as community legal workers) and the "systems" approach (concentrating on perfecting limited routines), do not qualify for approval. The potential community legal worker is frequently excluded from the programme by the high school requirement. The new careers approach for the poor which evolved in Ontario has effectively been excluded from American community college programs.³⁰ It is unclear whether the systems approach would also be excluded from training paralegals, as the criteria state that curriculum should stress understanding and reasoning rather than rote learning of facts. "The technical courses should emphasize how the subject being studied is applied to the practice of law and should emphasize principles and procedures common to as many types of law related activities as possible."³¹

It is important to consider briefly some of the less traditional approaches to paralegal education which have developed in the United States. American programs have developed within law schools, universities, colleges, private institutions and in the form of ad hoc seminars attempting to provide much

needed education for the paralegal. The law school programs for paralegal training in the United States have focused mainly on community legal workers or lay advocates. The leaders in this field have been Denver College, Boston College and Columbia Law School. Although it seemed logical that some role for the law school should be developed in the area of paralegal education, a number of factors have however militated against law school participation. Law schools generally are academic institutions training professionals. The legal assistant is seen as a technician and not a professional. The over-crowded and often under-staffed law school has little interest in training technicians and arguably lowering its academic standards. Law schools also fear that their involvement might lead to the unauthorized practice of law.

Despite these factors, American law schools have played and continue to play a leadership role in paralegal education. In 1970, the Committee to Study the Curriculum of the Association of American Law Schools (the Carrington Committee) recommended that law schools undertake to train paraprofessionals. This recommendation was based on two assumptions. One is that the demand for legal services will and should substantially exceed the capacity of existing or projected training programs. The other is that persons with ordinary ability can, with a modicum of training, perform creative roles in meeting the

excess demand. The Carrington Report assumes "that a market can be created for legal services which will be available at less expense and will employ more ordinary talents."³²

The concept is closely analogous to that which gave birth to the Volkswagen. In seeking to provide a Volkswagen legal service, the model assumes that it is desirable to maximize the opportunity of all citizens to have professional assistance in dealing with the many major disputes and planning problems which confront every person in a highly industrialized society. Many persons are forced to choose between deluxe services or none; some will be denied service that they desire and are willing to pay for.

The model curriculum developed by the Association of American Law Schools eschews the participation of law schools in the training of "paraprofessionals", "sub-professionals", and "lay assistants".³³ The Curriculum Study Project Committee considered that the performance of standardized tasks is inimical to the critical analysis which is the business of law schools. In contradistinction, the Carrington Committee saw law schools training a new breed of professionals who would be expected to find creative solutions and to use their own judgment in dealing with legal problems.

The Carrington Report recommendations followed the instigation of the course for training legal assistants to work in ghetto law offices offered jointly by Columbia Law School

and the College for Human Services in New York City. This program initially chose twenty-three applicants - nineteen blacks and four Puerto Ricans with an education range between six and two years of college. The average age of students was twenty-nine with a range from twenty-one to fifty-nine years of age. The students attended the program at no charge and a living stipend was provided during their training program. The program was designed to train participants to work in ghetto legal offices.³⁴

The trainees all enrolled in the College for Human Services and completed the two year liberal arts program. The College focuses on social activism emphasizing courses on urban change, psychology and the humanities. This preparatory program provided an excellent orientation for community advocacy.³⁵ Students received in conjunction with the liberal arts program, legal training in three phases:

- (1) Introductory law courses: 3 days per week for 8 weeks at the Columbia Law School;
- (2) Legal Principles: 90 minutes per week for 36 weeks at the College for Human Services;
- (3) On the job training: Whenever not attending classes during the two year period.

The introductory program at Columbia Law School was geared to four areas: (1) general legal skills and ideas, (2) landlord-tenant, (3) welfare, (4) family law. As the community law offices in New York do not specialize in one area

of law, the planners had to provide a generalist education. The general skills course covered: interviewing, nature of the legal system, library research, ethics, fact-law distinctions, investigation. The specialty courses were taught by staff lawyers at the New York Clinic who had expertise in the area. Methods of teaching included lectures, discussions, workshops, role-playing and problem solving. The introductory course material was preparatory to on-the-job training. The continuing link was the weekly course taught at the College by Columbia staff which attempted to relate work experience to formal training.

The role for law schools in training community legal workers as proposed by the Association of American Law Schools demands serious consideration. The model proposed envisages three types of law school curriculum of which the "open curriculum" affords some hope to the new public interest worker. The Carrington Report underlines the need for law school participation in the development of such a new legal profession. It suggests that nothing will happen in this area unless the leadership and direction as well as the institutional prestige is provided by American law schools. The assumption throughout is that individuals who are seeking a second career may be attracted to the new professions allied to the practice of law.

Law schools have also been involved in the training of private sector paralegals. Antioch School of Law began a program for legal technicians in 1972. In keeping with the clinical nature of the school, students spend considerable accredited time in the school's poverty law office. The Antioch program is eighteen months in duration. The Utah Law School and the University of Southern California Law School have provided more short term courses for private sector paralegals.³⁶

The movement to train legal assistants outside the law firm began with the founding in early 1970 of the Institute of Paralegal Training in Philadelphia. The Institute was established by three practising attorneys to train lawyers' assistants in Philadelphia. The initial class consisted of approximately thirty women who were recent graduates of prestigious undergraduate colleges, who were recruited through advertisements in college newspapers and the New York Times. Tuition fees were \$500 for a three-month/ 190-hour course in corporate law which was the pilot curriculum. Trainees were initially exposed to the basics of corporate law but were ultimately prepared to prepare preliminary drafts of both simple and complicated corporate documents to assist in processing applications of the sale of large corporations. The Institute has now added similar courses on probate and real estate law.

The Institute of Paralegal Training offers to refund a student's entire tuition if he/she is unable to find a job, in a given geographical area, within two months of graduation. Law firms pay the Institute an \$1,800 placement fee which is refundable if the firm is not satisfied with the graduate.³⁷ Students can prepare themselves for paralegal work in the area of corporate law, trusts and estates, litigation, real estate, employee benefit plans or criminal law. In light of the success of the Philadelphia program, a number of similar institutions have sprung up.

A number of law schools have developed programs offering specialized paralegal training patterned after the Institute of Paralegal Training curriculum. These law school programs offer certificates and not degrees to their graduates who are employed by law firms as litigation, probate, corporate or real estate specialists. California has two such programs located at UCLA and USC. As of July 1976, UCLA had granted 450 certificates to graduates who had already completed a Bachelor of Arts degree while USC had graduated 900 students by the same date.³⁸

In the public sector the Dixwell Legal Rights Association (DLRA) of New Haven, Connecticut was the first to offer a training program recognizing the need for new careers in poverty law. It has developed training programs, conferences and pamphlets and manuals, which it makes available to local action

groups throughout the United States.³⁹

The Dixwell program is three months in duration. The major thrust of the training is the clinical experience of the students. After a two week orientation, students are sent into the field under extremely close supervision. Classroom sessions are continued to discuss the types of problems and experiences that the trainees are encountering.⁴⁰ The Dixwell Legal Rights Association program has been considered the paradigm of lay advocacy training in the United States.⁴¹

While standard poverty literature has often focused on the weakness and incapacities of the poor, DLR emphasizes their capacities and capabilities. Dixwell emphasizes the variety of roles that the community worker can effectively perform as community legal educator, lay advocate referral agent, case finder, translator of language and life style, community organizer, investigator and office assistant.⁴² The Dixwell approach attempts to mobilize the natural advocacy skills of all citizens and to assist in developing their self-confidence so that they are able to help their neighbours and initiate institutional changes.⁴³

In addition to the training programs for law clerks and paralegals a number of ad hoc training entities have developed. The most widely discussed is the ABA sponsored San Francisco Pilot Program.⁴⁴ The project concentrated on probate law and lasted for a three-week period. It was intended

to upgrade the skills of already employed legal assistants. Legal assistants spent the first week receiving specialized training in legal research and the tax aspects of probate law. During the second week the employing attorneys themselves attend lectures on office efficiency and management. Assistant motivation, communication and supervision are discussed. In the third week, both the assistants and their employers attend together to discuss the development of manuals and performance expectations for legal assistants. This model of training both employer and employee has much to commend itself both for its flexibility and its highly relevant subject matter.

Another training program available in the United States is the National Legal Secretaries Association professional secretary training course. This program is offered on a correspondence basis with trainees writing intensive final exams. Such a program will soon be introduced in Canada through the Metropolitan Toronto Legal Secretaries Association.⁴⁵

Footnotes

1. Statsky, W., Introduction to Paralegalism, West Publishing Co., St. Paul, Minn. 1974 at p. 177.
2. Potential is demonstrated in Law and Society Supplemental Calendar 1977, York University.
3. Statsky, Introduction to Paralegalism, at 182.
4. An Act to Amend the Department of Education Act, 3rd Session, 27th Legislature, 13-14 Elizabeth II, 1965.
5. Ontario Colleges of Applied Arts and Technology, Commission of Post Secondary Education, 1971, No. 6, at p. 13.
6. Supra, p. 13.
7. The 1972-76 figures are taken from the survey of new entrants into law clerk programs furnished by the Ministry of Colleges and Universities. The data is collected by program not by year.
8. Seneca College had, for example, 218 applicants for 70 positions.
9. Ian Outerbridge, "Recruiting in a Metropolitan Area" in Law Office Efficiency. (See Chapter X.4).
10. Durham College has instituted a three year program for this reason among others.
11. Approximate ratios of graduates to admissions are:

Fanshawe	35/60
Durham	17/35
Seneca	40/75
12. This statement is based on interviews with teachers at three community colleges.
13. Typical texts at Seneca include:
 - (1) F.A.R. Chapman, The Law and You, McGraw Hill, Toronto.
 - (2) F.A.R. Chapman, Fundamentals of Canadian Law, McGraw Hill.
 - (3) Watson, Borins . . . , Canadian Civil Procedure, Butterworths.
14. Fanshawe Grad. Trac, 1-year program, p. 10.
15. Ontario Colleges of Applied Arts and Technology, Commission on Post Secondary Education, 1971, p. 52.

16. Note that the colleges themselves determine which jobs are to be counted as 'law related'.
17. Note that of this number all 18 were 1976 graduates.
18. The preliminary brief of the Institute of Law Clerks of Ontario to the Professional Organizations Committee included course syllabi and sample exams.
19. Durham encourages the writing of these exams while Senaca College does not.
20. We draw the Committee's attention to Ophthalmic Assistant Fundamentals in Clinical Practice written by Harold A. Stein and Bernard J. Slatt, both clinical teachers at the University of Toronto. This text, written by two leading ophthalmologists is now in its 3rd edition. We quote from the Forward to the book:

"Human engineering deals with the conservation of that priceless asset - time. The most efficient use of time demands that each member of the medical team perform those functions that he and she is uniquely fitted to perform. Those techniques and skills that can be delegated to others must be so delegated in order to extend the services of the ophthalmologists. Since these other members of the team must be taught, and since teaching takes up the ophthalmologists' time, the need for a book covering the subject matter is important to ophthalmic assistance as is self-evident."

The text of this book is 542 pages and contains 853 illustrations including 74 in the Atlas of Common Eye Disorders. According to the authors this text has now become a best seller and is used in training medical assistants throughout North America.

21. William Statsky, The Education of Legal Paraprofessionals - Myths, Realities and Opportunities (1971) 24 Vanderbilt Law Review 1083 at 1083.
22. L. Turner, Effective Use of Lay Personnel Revisited [1970] Law Office Economics 73; see also K. Strong, "A Systems Approach to Training" in Law Office Efficiency (American Bar Association: Chicago, 1972) 57.
23. American Bar Association Special Committee on Legal Assistants, The Training and Use of Legal Assistants: A Status Report (American Bar Association: Chicago, 1974).

24. ABA Special Committee on Legal Assistants, Proposed Curriculum for Law Office Personnel (Chicago, 1971).
25. Guidelines for the Approval of Legal Assistant Education Programs. 1973 and Evaluative Criterial for these guidelines were published in 1974, ABA Special Committee on Legal Assistants, Legal Assistant Education (Chicago, 1974), at 39.
26. ABA Special Committee on Legal Assistants, The Training and Use of Legal Assistants: A Status Report (Chicago, 1974).
27. E.J. Reisner, Legal Assistants: New Future for the Practice of Law, (1975) 48 Wisconsin Bar Bulletin , No. 4, p.7.
28. Supra, note 25 at 19.
29. Supra, note 26 at G-206 at 45.
30. A discussion of new careers for the poor is found in Pearl and Reissman in New Careers for the Poor (Free Press of Glencoe, 1965) where it is stated: "that human service occupations can be reorganized to produce better services by enabling disadvantaged, undereducated people to perform useful work at new entry-level jobs emerging in present professions."
31. Supra, note 26 at 45.
32. For a more detailed discussion of this subject see W. Statsky, Introduction to Paralegalism, (St. Paul Minn., 1974), pp. 169-184.
33. Association of American Law Schools, Training For the Public Professions of the Law (Assoc. of Am. Law Schools, Washington, 1971).
34. See Statsky, W., Para-Professionals Expanding the Legal Service Delivery Team (1972), 24 Journal of Legal Education at p. 397.
35. Ibid., at 411.
36. See K. Strong, in Law Office Efficiency, supra note 22 at 61-66.
37. Brickman, L. supra note 23, footnote 355 at 1227.
38. Watermaker, V., The Impact of the Legal Assistant on the Delivery of Legal Services, (1976) 10 (No. 7) Journal of the Beverly Hills Bar Association 22 at 46.
39. See Ader, M., A Brief Guide to the Training and Development of Paraprofessionals, (1971) 5 Clearinghouse Review 379.
40. Brickman, supra note 23 at 1226.

41. Brickman, supra note 23, at 1225.
42. Brickman, supra note 23 at 1226.
43. The question of whether the graduate of the Dixwell Legal Rights Association Program should be categorized as Para-legal worker, Para-social worker is open to discussion. Some writers, including Robert Cooper, consider that it is more appropriately Para-Social Work. It is our opinion that this type of categorization is totally inappropriate when dealing with new professional roles and communities seriously unserved by lawyers.
44. American Bar Association, Special Committee on Lay Assistants for Lawyers, San Francisco Pilot Project Report: Training for Legal Assistants (Chicago, 1971).
45. See Metropolitan Toronto Legal Secretaries' Association, Brief to the Professional Organizations Committee, October, 1977 (unpublished, on file at the Committee's offices).

XII. The Public Sector Paralegal in Ontario: The New Careers Movement

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B. The American Experience

C. The Ontario Experience

1. Metro Tenants' Legal Services
2. Neighbourhood Legal Services (NLS)
3. New Welfare Action Centre
4. People and Law Research Foundation (PAL)
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XII. The Public Sector Paralegal in Ontario: The New Careers Movement

A. Introduction

The concepts of paralegal service and paralegal workers have been established elements of the private practice of law for many years. Legal executives have been functioning in England and the United States since the end of the 19th century.¹ However the term "paraprofessional" has come into extensive use within the last decade with specific reference to the provision of legal services to low income citizens. The term 'paraprofessional' describes the thousands of men and women entering service occupations in law and other fields which have been traditionally the exclusive preserves of those with full academic credentials and licenses to practise. These paraprofessionals have made significant contributions to their communities on the basis of varying amounts of formal training combined with considerable concern and useful experience. A major impetus for the recent impact of paraprofessionals on formerly "reserved" turf was the discovery that agencies could hire these people at salaries roughly half those demanded by degree-holding professionals and so employ enough people to handle the necessary tasks without over-straining their budgets.

A far more important discovery, however, was that such persons often have a special awareness of the situations confronting their potential clients. A thorough familiarity with their communities and their needs permits such paraprofessionals to communicate easily with members of their community and to

offer innovative solutions not always apparent to the university trained worker not native to the community.

The paralegal employed to work in his own low income community has an intimate involvement with and concern for the office clientele. Paralegals are optimally recruited from the community in which they live and can therefore articulate the problems of that community to the institutions and agencies which regulate services to the poor. The community legal worker (as we shall refer to this type of paraprofessional) usually requires special training to maximize his or her usefulness to the agency for which he works, but his background knowledge of that community and access to community resources and information make his services invaluable both to the agency and to its clientele.

Pearl and Riessman² point out that the poor are often deprived of employment opportunities while adequate human and legal services remain unprovided. They argue that arbitrary standards and irrelevant certification procedures ought not to stand between those who need jobs and opportunities for useful employment of the poor. There are benefits in this approach to be gained by society as well as by those presently unemployed or under-employed. It is essentially a matter of arranging to receive services from the poor rather than providing services to the poor.

Lester Brickman, a leading proponent of the extension of the New Careers Movement into the legal services field, expresses

the conviction that legal services can be improved at least as much as any other human service by enabling disadvantaged people to enter legal services as the new legal professionals. Brickman cautions that efficiency ought not to be the only guide in determining the value of such a scheme. He stresses the value of recognition of developing human potential set free from its present constraints.³

The use of paralegals in the public sector has depended in Canada upon the provision of funding for community legal services. Because the community legal workers provide services to the poor or low income citizen at no charge or at a fee based on the client's ability to pay, they are dependent upon provincial and federal funding of legal aid for their livelihoods.

B. The American Experience

The public sector paralegal has emerged as a creature of the development of community legal services or "the store front lawyer". The American roots of this legal aid system are of particular interest because of their direct bearing on community legal work. Until the early 1960s, legal aid programmes in the United States were restricted to local ad hoc initiatives. The need for the provisions of legal services to the poor had been originally argued by Reginald Heber Smith in Justice and the Poor, published by the Carnegie Foundation in 1918.

Subsequently legal aid in the United States was almost exclusively a privately financed undertaking. Legal aid organizations derived their support from Community Chest (60%), bar associations (15%) and individual lawyers on special fund-raising campaigns.⁴ There was almost no governmental support (federal, state or local) and there existed a philosophical preference among members of legal aid societies that things should remain that way. In fact, in the 1950s the threat of a government-financed plan similar to Great Britain's legal aid and advice scheme stimulated state and local bar associations to establish private legal aid societies.

A comprehensive legal services plan did not emerge in the United States until President Lyndon Johnson declared his way on poverty in 1963. The Ford Foundation had previously funded the creation of neighbourhood multi-service centres providing legal and social services to communities in New Haven, Connecticut and New York City. These centres had no relationship to the main stream of the American legal aid movement, and though non-legal personnel were used in some casework situations they were primarily involved in community work. Unfortunately, funding became a serious problem and the projects were discontinued in 1963 and 1964.

The neighbourhood legal aid clinic, as the "supermarket" of social services, using laymen as "homework aids . . . , recreation aids . . . , health aids and legal advocates for the poor" was foreshadowed by Sargeant Shriver, President Johnson's Chief Advisor on

Poverty in a speech delivered in September of 1964. Within days of the reporting of this speech the American Bar Association's headquarters in Chicago was flooded with letters from lawyers demanding that action be taken to prevent widespread unauthorized practice. The American Bar Association President, Lewis Powell, stated: "Our profession must face up to this problem and find more effective solutions. Unless we do so others - far less interested in the profession of law and also less competent to devise reasonable solutions - will undertake this for us."⁵ When ^{*}OEO Legal Service was established in 1965 a partnership, or at least a compromise had been arrived at between the American Bar Association and the American federal government which allowed for the establishment of lawyer-dominated community clinics. These clinics were based on the conceptual model proposed by Edgar and Jean Cahn in their article in the Yale Law Journal: "The Law on Poverty: A Civilian Perspective."⁶

These neighbourhood law offices were almost immediately inundated with cases which could not adequately be handled by existing manpower.⁷ Within the first year, 515 neighbourhood law offices in 160 communities, staffed by more than 700 attorneys were funded or actually operating. Edgar and Jean Cahn who had been involved in the initial experiment in legal services in New Haven provided much of the philosophical and personal leadership for the introduction of neighbourhood legal services. In "What Price Justice: The Civilian Perspective Revisited",

* Office of Economic Opportunity

they stated:

"Typical neighbourhood law firms today look very much like the legal aid offices they were to improve upon with the exception that they are decentralized and take cases heretofore not handled by anyone." /8

The Cahns were concerned about the mounting caseload and the inability of neighbourhood staff lawyers to deal conscientiously with the demand for their services. They found that the neighbourhood programme was staffed almost entirely by paid lawyers with little use of either volunteer members of the bar or of non-professionals. They also criticized the fact that non-professionals were receiving very little training that would enable them to carry out functions which the Cahns considered were being performed unnecessarily by lawyers. Insufficient time had been allocated for the training as well as the interning of non-lawyers. The Cahns were highly critical of the failure to use non-professionals in the delivery of legal services:

"Finally, with respect to manpower, we have created an artificial shortage by refusing to learn from the medical and other professions to develop technicians, non-professionals and lawyer-aides - manpower roles to carry out such functions as: informal advocate, technician, counsellor, sympathetic listener, investigator, researcher, form writer, etc.

At present, lawyers are expected to perform all these functions. To equip them, lawyers are put through an extensive period of formal training and then apprenticeship that limits the number that can be produced. Yet, lawyers spend only a small portion of their time performing functions which cannot be performed

equally well by less thoroughly trained persons. Nonetheless, the profession has refused tenaciously to delegate any of these functions to anyone else.

This manpower shortage has been reinforced and intensified by policies which purport to have the sole end of protecting the client from unskilled or unethical practitioners. Thus, for instance, we have adopted a licensing system to certify who may hold themselves out to render legal services in a given jurisdiction. Licensing persons to perform certain acts is certainly one plausible way to protect the client or consumer. But our licensing procedures take no account of the varieties and gradations of skill which would be adequate from the consumer's view.

Rather than attempting to relax the shortages caused by licensing, the profession has developed in such a way as to increase these tendencies." /9

In 1968, a study was undertaken by the University Research Corporation to determine the feasibility of the use of paraprofessionals in the legal services offices.¹⁰ In this study, twenty-four neighbourhood legal service lawyers submitted to intensive observation. All of their activities on the job were first categorized.¹¹ These activities were observed in five minute segments with the observer making one of four judgments as to each five minute segment:

1. The lawyer's actions were not delegable to a non-lawyer "because it required the skill, judgment or other attribute which only an attorney would be likely to possess";¹²

2. It could be delegated to an existing non-lawyer staff person;¹³
3. It could be delegated to the hypothetical position of "Superior Secretary" who would maintain the office docket, draft routine documents, gather "in-house" facts, answer correspondence, retrieve library materials identified by the attorney and help train other non-professional staff;¹⁴
4. It could be delegated to the hypothetical position of "Legal Technician" who would conduct factual research out of the office, search records out of the office, perform advocacy tasks where the legal rights of the clients are clear, counsel clients on non-legal or pre-legal matters and otherwise maintain contact with office clients.¹⁵

Observers in this research study were able to note 552 five minute periods of lawyers' behaviour and judged approximately one out of every four segments of behaviour to be delegable to existing non-lawyer staff and to the two hypothetical paraprofessional positions.¹⁶

In response to this study and two other significant surveys, the House of Delegates of the American Bar Association established

a special committee on law assistants for lawyers, (subsequently renamed the Special Committee on Legal Assistants). It resolved:

- "1. That the legal profession recognize
that there are many tasks in serving
clients needs which can be performed
by a trained non-lawyer assistant
working under the direction and
supervision of a lawyer;
2. That the profession encourage the
training and employment of such
assistants"17

At the outset of the development of the public sector paralegal in the United States there was considerable controversy over the boundary lines between the roles that paralegals and staff attorneys would play in community law offices and other legal aid settings. There was also concern that the private bar would attempt to restrict the role and the ultimate effectiveness of paralegals. Despite the considerable discussion of these issues, it became evident that the field could not be specifically blue-printed and that attempting to define the role of paralegal was a frustrating if not futile exercise.

Since 1968, the marketplace in the United States has controlled events. Paralegals have blossomed in the United States throughout the private sector and the American Bar Association

has attempted to specify the roles of paralegals in private law firms as well as those of paralegals working in community law offices. Legal aid societies and the Legal Services Commission have determined the amount of funds to be expended on the training and use of the public sector paralegal. Public sector paralegals have developed a variety of roles and functions. The legal profession and its "unauthorized practice committees" have not challenged the use of the public sector paralegal to deliver legal services to low income people. American commentators believe that in 1978 the only limitation or restraint in the United States on the role of the paralegal in the public sector is the limitation of training. William Statsky recently stated: "if paralegals are trained effectively, community clinics will find a way of letting the paralegal deliver the service."¹⁸ If paralegals demonstrate that they can do the task, the onus is shifted to the profession to demonstrate that he or she cannot or should not do the task. In most instances, the private bar and the legal profession have and will in all likelihood continue to ignore the public sector paralegal.

At the present time, the Standing Committee of the American Bar Association on Paralegals is primarily concerned with the accrediting of training programs. Previously this Committee had only approved programs of paralegal training. This accreditation of training programs may be perceived as an indirect

form of certification and approval of the graduates of these programs and may eventually require most paralegals to attend ABA approved paralegal program. As yet, ABA accreditation has had little or no impact on hiring policies.¹⁹ The American Bar Association accreditation process is quite rigorous and considers curriculum, faculty, financing, the availability of legal materials and training resources. Approval of the paralegal program ultimately must come before the annual meeting of the American Bar Association. Once a school is accredited it must submit annual reports.

Most paralegal training still takes place "on the job" and the best paralegal training²⁰ is that conducted by the private law firm. The American Bar Association has created a National Accrediting Commission composed of private and public lawyers, private and public paralegal educators and representatives of consumer groups.

Although most American community colleges and law schools training paralegals are not accredited,²¹ they are complying with the American Bar Association training guidelines. Forty-five of the sixty hours of training required for graduation are devoted to general law related courses while the remaining fifteen hours are devoted to specialty courses. The emphasis in the United States is to provide paralegals with the competence to allow them to solve legal problems. There is less emphasis on substantive law courses or on specialized legal training.

A major problem facing American legal services programs is the high degree of turnover of paralegals.²² A brief examination of the turnover problem of paralegals in the public sector in the United States allows us to understand some of the problems confronting public sector paralegals. Most public sector paralegals are paid low salaries and lack job security. They were originally employed under a variety of state or federally funded short-term jobs programs such as CETA and VISTA. These two programs fund 22% of paralegals working in legal services programs and are designed to pay low wages for individuals working in legal services for one year. Few paralegals, regardless of the quality of their work, are hired as permanent staff. Rather, they are replaced with a new group of similar short-term employees. This cycle has been repeated each year since the American Legal Service program began using paralegals in the late 1960's. This practice has effectively institutionalized the high turnover rate.

For those paralegals who move from a temporary to a permanent position the major problem is salaries. According to a study of sixty randomly selected programs conducted by the Legal Services Corporation in May 1977, paralegals with five years or more experience were being paid an average of between \$9,490 and \$10,595 annually. This is particularly significant since, according to the same study, new law graduates were receiving an average starting salary of \$12,000.

C. The Ontario Experience

The evolving role of non-lawyers in the delivery of community legal services in Ontario is closely linked to the development of the Ontario Legal Aid Plan.²³ In this regard it is important to note that from 1966 (the date of the modern plan), the Ontario Legal Aid Plan has offered its services through the private bar without either full-time lawyers or legal services clinics. Once the Plan determines an applicant to be eligible for assistance, he is given a 'certificate' which authorizes any lawyer willing to do so to perform the required services and to bill the Plan for his fee.

In its pure form, the "fee-for-service" model did not implement outreach programmes directed to preventive legal services. It was strongly biased in favour of litigious matters, primarily in the criminal and family law areas.²⁴

In the late Sixties, three important events occurred in Ontario which laid the ground work for the development of paralegals in legal services. In 1969, student legal aid societies began to offer legal services outside the supervisory ambit of the private bar and the Ontario Legal Aid Plan. In 1969, Injured Workers' Consultants was started as a self-help group for injured workers. In 1970, the Federal Department of Health and Welfare made grants to four "demonstration" community legal clinics across Canada.²⁵

A number of other experimental legal services projects were initiated at the beginning of the decade including Problem Central - a volunteer centre providing advice in unemployment insurance, workmen's compensation and immigration matters; the Toronto law firm Thomson, Rogers opened a branch poverty law office in the Kensington Market area.²⁶ Perhaps the most significant of these projects was Parkdale Community Legal Services established in downtown Toronto in 1971 as Ontario's first neighbourhood law office and the setting for Osgoode Hall Law School's first clinical teaching program.²⁷ Parkdale was funded by the federal Department of Health and Welfare and the Council on Legal Education for Professional Responsibility. In late 1971 the Parkdale project received Local Initiatives Program (L.I.P.) funding for the hiring of lay advocates. The application stated that funds would be used to:

"train lay people to handle some of the legal services which were being handled by lawyers and law students; who have ongoing input from the community into the office at the staff level; and to have lay advocates involved in the office's community education program."

The first two lay advocates were hired by the Parkdale Clinic in February 1972 - one remains with the clinic and has, in the intervening years, developed expertise in welfare legislation, workmen's compensation and unemployment insurance claims. The original LIP funding for lay advocates was provided on a short term basis. By November 1972, Parkdale had made a serious commitment to the

use of lay advocates in the delivery of legal services and had incorporated the salaries of four paralegals into the office budget.

The Ontario Legal Aid Plan itself was part of the movement in the early 1970's to new forms of service. In 1971, pilot community legal aid clinics were established. Their role was limited to giving legal advice to the chronic poor.²⁸

In 1970 the plan approved the formation of Student Legal Aid Societies at five Ontario law schools. As an indication of the attitude of the Law Society toward the use of non-professional labour, the Unauthorized Practice Committee was asked to examine fully the legitimacy of law students functioning in student legal aid clinics.²⁹

In August of 1972, the Law Society released its Community Legal Services Report prepared by a sub-committee of its Legal Aid Committee.³⁰ The report commended the existing legal aid plan and did not recommend any fundamental change in either its structure or in the use of salaried lawyers and paralegals. The report acknowledges that:

"The 'techniques' which may be deployed in the delivery of assisted legal services are many and varied: private law offices, student services, para-professionals, mobile clinics, clinical law offices and roving or assigned Deputy Counsel -- to list a few. Generally we regard the potential role of such 'techniques' as supplements to the existing plan where gaps in service exist for whatever reason." /31

The Fairbairn Report neither acknowledged gaps in the Plan, nor was it prepared to recommend 'techniques', either temporary or permanent, which it considered might be useful to complement the Plan. The Report recommended that an adaptation of the English Twenty-Five Pound Scheme be introduced in Ontario to deal with the problem of minor legal problems and summary advice situations. The Community Legal Services Report recommended that clinics should not be established in Ontario except where conventional legal services were "patently inadequate or where any demonstrable reticence toward such service is the clear result of factors other than ignorance of the right to obtain assisted legal services in a conventional matter". The Report emphasized the role of the private bar and stated that establishing clinics in underserved areas would act as a deterrent to the gradual re-distribution of the legal profession into areas of unmet need. The Report perceived no significant role for the non-lawyer either within the existing Ontario Legal Aid Plan or the developing community clinics.

The Legal Aid Committee accepted the Fairbairn Report and in 1972 instituted the Hamilton Pilot Project to provide summary advice to residents in a clinical setting. This scheme established an office in an existing community centre known as Victoria Park in Hamilton, at which a rotating panel of private lawyers was to be available at stipulated times, to give summary advice. If the client problem required retaining a lawyer, the applicant would be permitted to apply for a Legal Aid Certificate

and to retain the services of the lawyer who had advised him or to select another lawyer from the Legal Aid Roster. Approximately eighty lawyers in the Hamilton area volunteered initially to staff the experiment.

Concern about the adequacy of the Ontario Plan continued to grow. In December, 1973, the Attorney-General of Ontario created a Task Force on Legal Aid under the chairmanship of the Honourable Mr. Justice John H. Osler.³¹ The Task Force was asked to examine and evaluate the effectiveness of the Ontario Legal Aid Plan and specifically to examine and evaluate alternative methods for the provision of legal services to low income urban and rural communities and native population areas.

The Osler Task Force specifically addressed the question of the use of paraprofessionals in the delivery of legal services.³² The Task Force recognized the potential for the training and use of paraprofessionals in the delivery of legal services in a clinical setting and recommended that:

"Legal Aid Ontario, in conjunction with the Law Society of Upper Canada, should develop a program to be conducted through the community colleges, in conjunction with the Bar Admission Course or elsewhere for the academic training of, and through existing neighbourhood legal aid clinics, for the practical training of law advocates or paraprofessionals." /34

The Task Force stated:

"We're satisfied that a properly trained and supervised para-professional has an

important role to play in the delivery of legal services by clinics. Because many of the problems that will be brought to the clinic may only have a marginal legal component, the paraprofessional may be better able to deal with them than a lawyer. In addition, paraprofessionals may be used to assist in small claims court, the family court office and no doubt in many other respects under the new plan."

The Osler Task Force registered some concern with the concept of clinics staffed by Duty Counsel such as the Hamilton Project.³⁵

"Perhaps most important, we have reservations about the ability of an ad hoc rotating clinic to attract and deal with existing clientele. Twenty-five clients interviewed per week out of a community fixed at 25,000 seems an inordinately low response compared to other experiments. Also the data creates some doubt about the effectiveness of transferring a 'continuing' client into a downtown office."

The Osler Task Force recommended the establishment of neighbourhood clinics to complement the existing Ontario Legal Aid Plan. The Task Force further recommended the use of paraprofessional personnel in such clinics. The Task Force also recommended that the plan be administered by a statutory non-profit corporation named Legal Aid Ontario. The rationale for this recommendation is explained in the carefully worded language which is characteristic of the Report:

"A number of briefs were delivered and submissions made to us representing that the position of the Law Society under the present scheme involves a conflict of interest. Public good must be the sole purpose of Legal Aid Plan,

whereas the Law Society is by statute the governing body of the legal profession and must be primarily concerned with its welfare. The term "conflict of interest" may not be one appropriate in the circumstances and we state emphatically that no suggestion was made to us at any time that the Law Society or its Legal Aid Committee has in fact permitted such a conflict to develop. Nevertheless, it is impossible to perceive the direction of the Legal Aid Plan as being sufficiently single-minded if it is left in the hands of a Committee of The Law Society, reporting to Convocation, the governing body of the Society, both groups being composed overwhelmingly of lawyers." /36

In 1975 the Law Society responded to the Osler Task Force. Ten laymen were appointed to the Legal Aid Committee. Most significantly, the Plan granted Parkdale Community Legal Services interim funding commencing on April 1, 1975. In May 1975, the Legal Aid Committee appointed a sub-committee to study criteria for the funding of community clinics. While the funding of Parkdale by the Ontario Legal Aid Plan did not represent an acceptance of either the community law office model or of the use of community legal workers, it did provide maintenance funding for a clinic which employed three or four community advocates and was preparing a training program for six community legal workers.

In January 1976, the Law Society, after encouragement by the Attorney-General's Ministry passed Regulation 557 to The Ontario Legal Aid Act which created the Clinical Funding Committee composed of two members appointed by the Legal Aid Committee and one member appointed by the Attorney-General's Ministry. The Clinical

Funding Committee was to make recommendations regarding funding of "independent community based clinical delivery systems". The regulation defines "clinical delivery system" as "any method for the delivery of legal or para-legal services to the public other than by way of fee for service", and includes preventive law programs and educational and training programs calculated to reduce the cost of delivering legal services. The Clinical Funding Committee was to be a stop-gap measure instituted while a response was developed to the Osler Task Force. The Clinical Funding Committee remains in existence and has considerable authority to determine the provincial policy in respect of the development of clinics and paralegal services. The 1976 regulation did not lead to a full scale adoption of the American neighbourhood legal services scheme in Ontario, but has nonetheless created a funding base for community clinics. Funding of clinics has increased dramatically from \$295,000 in 1975-1976 to over two million in the 1978-79 fiscal year.

The following is a description of a number of the projects presently funded under Regulation 557 which make extensive use of community legal workers:

1. Metro Tenants' Legal Services

Metro Tenants' Legal Services was established in Toronto in 1976 to aid tenants encountering problems with the Ontario Rent Control legislation. The clinic is an extension of the federation of

Metro Tenants' Association, a coalition of tenants groups formed to promote tenants' rights. Metro Tenants' represent tenant groups at Rent Review Hearings and pursuant to the Landlord and Tenant Act, including County Court applications by tenants for termination of tenancies, abatement of rent and the return of security deposits. As the clinic primarily services groups, individuals who request assistance are referred to other community clinics. The Metro Tenants' Legal Services is presently staffed by four full-time paralegals all of whom are university graduates who have been actively involved in the tenants' movement in Ontario. The community legal workers are supervised by a graduate lawyer who works as Duty Counsel at the clinic and, in this capacity, reviews files and supervises case preparation. Staff learn in on-the-job training programs directed by more experienced staff. Some of the paralegals have also taken paralegal training programs at Parkdale Community Legal Services.

2. Neighbourhood Legal Services (NLS)

NLS is located in the "Cabbagetown" area of Toronto and began operations with a full-time lawyer and two staff in March 1975. Presently, in 1977-78, NLS has two staff lawyers and six community legal workers of whom four are former clients who had approached the office for assistance. The clinic states that:

"following the successful handling of each case, the 'clients' volunteered to assist the clinic. Today they work as trained community legal workers assisting others."

The clinic provides both summary advice and assistance, as well as case service in the areas of welfare law, U.I.C. benefits, landlord and tenant matters, and housing standards. The project conducts an extensive community education program and holds seminars in public housing projects and local taverns.

3. New Welfare Action Centre

The New Welfare Action Centre is located in Rexdale, Ontario and was opened in 1974 with federal Local Initiatives Program funding. The project is staffed by three paralegals, one of whom is the executive director. The staff, which has been with the centre for a number of years, represent clients before administrative boards and tribunals including the Social Assistance Review Board, the Rent Review Board and the U.I.C. Board of Referees. The Centre aims "to serve the socio-legal needs of low-income people and, at the same time, to preserve the dignity of those seeking assistance. To assist low-income people in an understanding of rights and obligations under existing legislation." The Centre received approximately 30% of its funding in 1977-78 from the federal government, the Municipality of Etobicoke and the Municipality of Metropolitan Toronto.

4. People and Law Research Foundation (PAL)

People and Law is the successor to the Thomson, Rogers' Kensington neighbourhood law office. In 1973, Thomson, Rogers withdrew from the experiment because of its concern with the difficulties of a

law firm using the traditional delivery model to meet the needs of low-income people. People and Law replaced the individual case by case approach with a training program to develop self-help skills of individuals within the community. PAL employed one lawyer and four paralegals and adopted a collective approach to decision making.³⁷ Hiring policies sought paralegals with community involvement backgrounds and experience with immigrant and low-income groups. People and Law was funded in 1976-77 by the Federal Department of Justice, private foundations, the United Church of Canada and the Clinical Funding Committee. In 1977-78 it received \$83,000 from the Clinical Funding Committee. In the spring of 1978, People and Law was the subject of a heated controversy when continued funding was denied by the Clinical Funding Committee.

5. Tenant Hot Line

Tenant Hot Line was incorporated in 1976 and was, for its first months, primarily a telephone service. In 1977 the office relocated in the Bathurst Street and St. Clair Avenue area of Toronto and expected to generate more "walk-in" clients. In 1976-77 the clinic employed six paralegals all of whom had been actively involved in the Tenants' Movement. In 1977-78 Tenant Hot Line employed seven paralegals and hired a staff lawyer. The staff was initially trained and supervised by a Duty Counsel who was a former articling student at Parkdale Community Legal Services. Tenant Hot Line primarily represents individuals and refers tenant associations to Metro Tenants' Legal Services.

6. Woodgreen Community Legal Services

Woodgreen Community Legal Services is located at Riverdale Socio-Legal Services. The Community Centre is one of the better known established community centres in the Riverdale area of Toronto. In 1971, Woodgreen was selected as an Ontario Legal Aid Plan pilot project in an attempt to reach low-income people who could not afford legal services. Initially, volunteer lawyers participated in a clinic open two nights per week. In 1977-78 Woodgreen received funding from the Clinical Funding Committee to hire a staff lawyer and one paralegal to expend the services already offered and to provide full case services in matters not covered by the Ontario Legal Aid Plan.

7. Problem Central

Originally a volunteer agency, Problem Central has grown so that it now employs six full-time staff and one full-time lawyer. The agency attempts to service the needs of multi-lingual citizens of the west end of Toronto from a series of satellite offices in local schools. The follow-up work to the night time clinics is completed during the day by staff members from the agency's main office.

8. Parkdale Community Legal Services (PCLS)

Parkdale Community Legal Services is the oldest community legal clinic in Ontario. It was established by Osgoode Hall Law School in 1971 as an experiment in neighbourhood legal services as well as a setting for clinical training. Parkdale was funded between

1971 and 1975 by the National Department of Health and Welfare and has, since 1975, been funded by the Clinical Funding Committee.

Parkdale provides a full range of legal services to the low income citizens of Parkdale. The office is staffed by the Director (who is jointly appointed by the Parkdale Board and Osgoode Hall Law School), four staff lawyers, four articling students, six community legal workers and six legal secretaries. As well, twenty law students spend sixteen weeks each semester delivering legal services at Parkdale. The six community legal workers at Parkdale presently handle unemployment insurance and welfare and workmen's compensation cases; undertake community education projects; appear before administrative tribunals; supervise community education projects; provide leadership in the Federation of Metro Tenants' Association; undertake training programs for community legal workers in other clinics; act as administrative assistants to the Board of Directors; provide leadership in office administration; are active in community development projects within Parkdale and throughout Metropolitan Toronto; have one representative on the Board of Directors; and have recently created a union which includes both community legal workers, support staff and articling students. The recently completed evaluation of Parkdale³⁸ by Roland Penner states:

"Each of the paralegals were indigeneous to the part of the community, had excellent connections and working relations with various community organizations, related exceptionally well to the students and groups to which they were attached. They brought to the students

their knowledge of the community, of the people in the community and their own highly developed consciousness of the needs of the clients. They were far more than assistants in the "mechanics of social security problems" (although that was certainly part of their contribution). Their input was truly . . . sensitizing the legal staff to the status and needs of the poverty community. It was clear in discussions with the paralegals, with students and with Professor Zemans that each one played a unique, quite highly specialized role." /39

Despite the number and significance of community legal workers at Parkdale, Penner emphasizes the fact that lawyers and law students had some difficulty in accepting paralegals as partners in the delivery of legal services.

"Student and staff acceptance of the role of the paralegals took some time to develop but appeared to be at a high level at the time of this evaluation. Students who initially were skeptical of the work of someone without formal legal training soon learned to rely more and more on the real expertise that paralegals had in specialized poverty law areas. Students and paralegals worked together in the preparation of resource material Over the period from 1972 to 1975 the role of the lay advocates before Administrative Tribunals had not only been accepted by students, staff and clients but to a high degree by the members of the tribunals who, I am told, welcomed the appearance before them of advocates with expertise and with a digest of the essential facts." /40

9. Injured Workers' Consultants

The Injured Workers' Clinic started on an ad hoc volunteer basis in 1969 under the direction of Mr. Alan Baldwin under the name WCB Consultants. In December 1976 the Board of Directors officially

changed the name of the clinic to "Injured Workers' Consultants", (IWC). The Clinic provides legal assistance to injured workers pursuing claims before the Workmen's Compensation Board and handles cases before the Adjudication Branch; Claims Review Branch; Injury Level Appeals; Hearing Level Appeals; No-Lost Time Claims; Short Time Claims; Long Term Claims; Permanent Disability. The clinic has no geographical limits, yet most of its clients are located in the greater Metropolitan Toronto region. The clinic does get approximately one-third of its clients from outside of Metropolitan Toronto.

IWC only employs community legal workers, some of whom may be law students, and social and community workers. IWC recently advertised for a new staff person "with experience in community or trade union work in administrative law". Priority is placed on applicants who can speak a second language. Although the community legal workers are providing legal services they are supervised by a committee of duty counsel and staff called the "claims committee". This committee reads outgoing letters; periodically reviews case workers' strategies and individual cases; and considers all appeals before they are presented. If the claims committee finds a weakness in the work of any individual or in the work of the staff as a whole it brings these matters to a staff meeting for solution. IWC states "that the claims committee keeps a close watch on legal developments in the workers' compensation and occupational health and safety areas so that they are in a position to continue upgrading knowledge of the staff." Beyond his regular

involvement in on-going legal supervision, duty counsel is involved in the preparation of staff training programs for novice caseworkers, as well as a more sophisticated program for experienced community legal workers.

As of December 31st, 1977 IWC was handling approximately 253 active cases, with each community legal worker handling thirty active files. There is clearly a demand for the work of the clinic: it has a waiting list of approximately forty cases at any given time. It is significant that of the 95 new cases opened during the last nine months of 1977, only 34 of the cases handled were for English speaking clients while 32 were Italian, 10 Spanish, 8 Greek, 5 French and one each from Chinese, German, Czechoslovakian and Yugoslavian communities. The project recognizes that it has not dealt adequately with the Portuguese-speaking injured workers and is therefore placing a high priority on the hiring of a Portuguese-speaking community legal worker. Although 34 of the new cases were of English-speaking clients, the majority of these were immigrants from India, Pakistan, Ghana and other English-speaking countries. During 1977-78, IWC received 30 referrals from government agencies, 28 referrals by friends of clients, eleven referrals from doctors, four referrals from lawyers, three referrals from M.P.P.s, one referral from a member of Parliament and two cases from employees at the Workmen's Compensation Board.

During the last nine months of 1977, IWC had 49 cases before the Appeals Examiner and Appeals Adjudicator and 31 cases before the

Appeal Board. The organization obtained 140 decisions from the Workmen's Compensation Board between April and December 1977 of which 87 were allowed, 8 allowed in part and 45 denied. The percentage of denials was increased from a low of 25% in May and June of 1977 to a high of 50% in December 1977. The Association asserts that the statistics reflect two things:

- "1. The Workmen's Compensation Board is increasingly denying claims which it once allowed;
2. IWC is more willing to take on harder cases and to appeal them where a policy issue is involved."

In 1976-77 IWC employed six full-time paralegals. This was increased to eight paralegals in 1977-78. Six of the staff members are university graduates, in such fields as nursing and sociology, and one holds a law degree; another is a graduate teacher.

D. Other Canadian Jurisdictions

Although many of the clinics predominantly staffed by paralegals require further funding from federal sources, legal aid funds have created some security for these groups in Ontario. While over one-third of the clinics provide general "poverty law" assistance, others now specialize in one area such as workmen's compensation, environmental law, landlord and tenant rights, research and education, and correctional law. The majority are located in Toronto; others are found in urban areas serviced by a law school (Windsor, Ottawa,

London, Kingston) or in close proximity to one (Oshawa and Hamilton). The problem of urban concentration has been recognized and after prolonged discussions with area residents, the Ontario Legal Aid Plan announced in February, 1978 the opening of a clinic to serve Northern peoples in Thunder Bay. With initial funding of \$37,000, the service opened an office in Thunder Bay and satellite offices in surrounding communities. The central office will be staffed by a lawyer, a paralegal, and support staff while the affiliated offices will be run by paralegals only. It would appear that the public sector paralegal is here to stay.

Other Canadian jurisdictions have adopted the neighbourhood legal services model as a primary method of delivery of legal services. Nova Scotia established ten clinics under the provincial plan implemented in 1972.⁴¹ Unlike the traditional model of funding of independent clinics, the Nova Scotia program is entirely controlled by the Barristers' Society. Four legal assistants were employed by the program in 1974.⁴²

The Community Legal Services (Saskatchewan) Act, 1974⁴³ provided a system of community law offices to provide services to communities on a contract basis. British Columbia⁴⁴ and Manitoba⁴⁵ have established a combined judicare and community law office systems similar to that being developed in Ontario. The British Columbia program is particularly interesting because eight of the twelve community law offices employ only paralegals as full-time staff. They are

supervised by local lawyers. The lay advocate is an essential element of the British Columbia plan.

The only legislation in Canada directly bearing on para-legals in the public sector is in Saskatchewan and Manitoba.

Section 30 of The Saskatchewan Community Legal Services Act,⁴⁶ states:

"The Commission or Board may employ any person who is not a solicitor to provide services under this Act provided the person is supervised by a solicitor; but such employee shall not appear as counsel in any Superior District or Surrogate Court."

Section 28 of the Saskatchewan Act establishes that information disclosed to such an employee "shall be privileged if such information would have been covered by solicitor/client privilege".

The Manitoba Legal Aid Services Society Act,⁴⁷ contains similar but less explicit provisions:

"Section 21(1) - All information and communication in the possession of the Society relating to an applicant and his affairs, is deemed to be privileged to the same extent that privilege would attach to information and communications in the possession of a solicitor.

Section 21(2) - Notwithstanding ss.1, and notwithstanding the provisions of The Law Society Act, the Society, in carrying out its objectives, is not deemed to be practising law within the meaning of that Act."

In Ontario the lack of specific legislation does not appear to alter significantly the unauthorized practice principles set out

in the Saskatchewan and Manitoba Statutes. The issue of privileged information, however, deserves legislative pronouncement similar to that of the Manitoba Act.

As in the case of the private sector paralegal, the community legal worker is theoretically bound by the supervision of the lawyer. This guideline as to the role of the community legal worker is of little value in light of the variety of settings where a staff lawyer is not employed and access to supervision may be sporadic at best. The consequences of insufficient supervision do not at present seem to be of concern to either the community legal workers or supervising lawyers.⁴⁸ In Ontario the variety of roles filled by community legal workers (from case technician to lay advocate to community organizer) are supervised to a greater or lesser extent by the lawyer affiliated with the project concerned.

Community legal workers are becoming a more unified group seeking both role definition job recognition. Legal service workers in Saskatchewan have joined the Saskatchewan Association of Legal Service Workers and have invited Native Courtworkers and private sector legals to join.⁴⁹ The group seeks collective bargaining rights and the recognition of paralegals as part of the legal services delivery team. In Ontario the non-professional staff of Parkdale Community Legal Services, Injured Workmen's Consultants, Metropolitan Tenant Legal Services, and Student Legal Aid Society (SLAS) of the University of Toronto decided to unionize in 1977.

This decision provoked some confusion and disappointment among the clinics involved. It may be considered that the decision to unionize was a movement away from the legal profession, if not from professionalism itself. In a recent position paper written by a community legal worker the following perspective is given to unionization:

"The idea to unionize and improve our working conditions represents the maturity of the staff and also a more realistic attitude toward ourselves and possibly a less paternalistic attitude toward our clients. I believe Virginia Woolfe once said that the reason she worked with the poor was not because she loved poverty or found it romantic, but because she hated it and wanted to see it ended. In addressing past notions of charity and romanticism of our jobs and our work, unionization has contributed to the quality of the clinical work, and to its purpose." /50

Despite the fact that the four unionized clinics have negotiated contracts with the union, they have been unable to honour these contracts because the government, through the Clinical Funding Committee, has been unprepared to supply the necessary funding community legal workers have argued that a collective agreement will assist community legal workers in dealing with issues of working conditions, job descriptions, pay and benefits.⁵¹

E. Training and Recruitment

It has been recognized that most paralegals in the public sector are action-oriented and must be trained within the context of their employment. The community legal worker has been generally employed by the young, struggling clinic to assist in the delivery of non-traditional legal services to the low-income community. The community legal worker may have had previous experience in some aspect of community life (e.g. selling insurance or on the executive of a tenant's association) but may have had limited exposure to lawyers, judges and the formalities of dispute resolution. There is no doubt that the community legal worker, as with the law clerk in the private law firm, must be literate and articulate. The difficulties of reconciling this requirement with equally compelling need in the public sector for involving and employing the poor is apparent. Most of the community law offices, recognizing the limitations of their resources and time, have hired individuals already possessing basic reading and writing skills. The high demand for services generally creates a need for community legal workers and often renders the clinic incapable of providing the training program required. It is clear that a more centralized system of training which will not be restricted by the

stringencies of the individual community law office or clinic is necessary, or the "New Careers" concept and the goal of participation by the poor in the legal services delivery system will have to be abandoned. This was recognized by the Osler Task Force which recommended a joint program to be developed by Legal Aid Ontario and the Law Society of Upper Canada in conjunction with the community colleges.⁵²

To date the only community college that has initiated a program particularly directed toward community legal workers is George Brown College in Toronto. The community worker program at George Brown is designed to produce trained community workers and is not specifically aimed at producing community legal workers. An examination of the course outline for the two year program revealed one course primarily related to paralegalism, entitled "Law for Community Workers". This ten hour course, taught in the past primarily by staff from Parkdale Community Legal Services and People and Law, is divided into three sections: Law; Agencies and Tribunals; and Specific Areas of Concern (e.g. Landlord and Tenant, Immigration and Family). Obviously a ten hour course would not provide much exposure to the law for community workers. Classroom instruction, however, is only one aspect of the program. Students spend approximately one half of their time in the field with community agencies. This could be anything from working with Children's Aid, an ethnic community group, or involvement with a clinic such as Neighbourhood Legal Services or

Injured Workmen's Consultants. It is therefore possible for a student in the George Brown program to develop paralegal skills and expertise during his field placement. One "field experience proposal" was to place six students with Parkdale to analyze unemployment.

The George Brown program is a two year diploma program; the school enrolls students every second year. Since the program's inception in 1973 there have been two graduating classes, producing a total of about thirty-five graduates (out of about fifty students). Of the thirty-five graduates, only about one-third are currently employed as community workers. Five are working in black community programs, one with Children's Aid, two at Injured Worker's Consultants, one at Mental Health and two are running their own programs. One graduate who had been working at People and the Law is now unemployed. Approximately one-third are not in the field at all, seven are pursuing further education elsewhere, and three are raising families.

The program receives about seventy applications annually. It accepts twenty-five but loses about one-third, because their expectations of the program are not met. Most students are female, with a median age of thirty to thirty-five. Most do not have a university degree, but do have Grade 12 and often one or two years of community college elsewhere. Most applicants have experience in the community worker field. They have often been organizers of tenants' groups and have worked in various capacities in other community groups or social services. This year's class includes five native persons, many of whom have expressed a desire to return to their reservations after

graduation (see the next section on Native Courtworkers). A selection committee of past students and staff selects applicants on the basis of their exhibited commitment to community work, maturity, stability, and tolerance. The ability to function in English has become a more significant pre-requisite, and a fluency test was recently introduced.

The program views the student's role as being that of helping the powerless through self help and community development. Students are not supposed to deal with problems on a case-by-case basis, but rather are to assist citizens in becoming organizers. The program's faculty are both graduate social workers as well as experienced community organizers with varying political perspectives. The program's staff is considering the possibility of increasing its commitment to the training of community legal workers by providing increased specialization in the present program or by developing a separate program.⁵⁴

The George Brown program for the training of community legal workers is very similar to the program devised at the College of Human Services in conjunction with Columbia Law School in New York City. The first year of the two year program is devoted to an examination of the nature of groups, institutions, and society, and the ways in which they may be changed. The curriculum is based on a recognition that the training of legal paraprofessionals for the public sector must extend beyond the study of specific areas of substantive law and the development of community communication

skills, to an analysis of the social context in which the legal problems of the poor arise. The basis of this educational approach is that paraprofessionals cannot be trained to be experts in every area but must be able to distinguish those situations in which they can provide assistance from those for situations in which other aid is needed. The community paralegal must be capable of understanding and responding to power structures and must be capable of choosing the appropriate remedy to apply in a given situation.

Most authorities advocate clinical instruction involving role-playing, simulations and actual on-the-job experience for the training of community legal workers. The dynamic nature of his future position is brought home to the trainee, as is the practical importance of the skills he/she is acquiring. Focus on methodology rather than content will lead to greater flexibility in adapting to varied demands, and will remove some of the insecurities associated with the now rather nebulous role definition for paralegals.

The importance of utilizing and developing skills already possessed by the trainee is continually emphasized, particularly in the context of training the poor to assume roles within the legal system. The process reviewed by trainers and trainees alike is one in which the trainee's life experience is relevant as the very basis of his advocacy development. Experienced trainers indicate that an appreciation of the paralegal's talent and abilities

assists in alleviating the chronic problems of programs for the poor -- paternalism, insensitivity to real needs and real aspirations, and the creation of further dependencies.

There has been limited development of community college interest in community legal worker education in Canada with George Brown College in Toronto and Prince Albert Community College in Saskatchewan being the exception to the general rule. However, there is a movement in the law schools towards incorporating the training of community lay advocates into existing community clinical programs. Dalhousie (Dalhousie Legal Aid Services), University of Toronto (Student Legal Aid Services) and Osgoode Hall Law School (Parkdale Community Legal Services) are examples of this trend in Canada. The case for involvement and leadership by Canadian law schools is persuasive. Law schools are evolving a broader definition of legal education, reflecting a growing awareness of their responsibility for the designing of an effective and economical legal services delivery system. Most Canadian law schools have a student legal aid program and are beginning to incorporate these programs into the academic curriculum. Interaction and co-operation between law students and community legal workers-in-training may lead to fuller understanding by each of the potential and limitations of the other.

The Dalhousie Legal Aid Service Program based its approach to the training of paralegal personnel on the assumption

that presenting information and telling the trainees how to perform certain tasks is "little more than a cornerstone, and that on-the-job refinement and experience in a natural clinical setting is crucial".⁵⁵ In the summer of 1972 Dalhousie Legal Aid Services sponsored one of the first structured training programs for legal paraprofessionals in low-income law. Although many community offices had employed paraprofessionals in some capacity, Dalhousie's scheme was the most ambitious as it was aimed at creating an autonomous body of trained personnel to work at external agencies. Other programs were more limited in their approach and tended to emphasize on-the-job training for office personnel. The Dalhousie program, while training several individuals who remained on its own staff, educated volunteers primarily for the Matrimonial Counselling Association whose main function was to assist individuals in obtaining their own divorces.

Brickman favours the preparation of paraprofessionals outside the law schools which he says are not now equipped to offer the kind of specialized or remedial education which is required.⁵⁶ He would favour the location of paralegal training in community colleges because they already have considerable experience in training paraprofessionals in other fields and are geared towards offering remedial work and on-the-job placements. He would confine the role of the law school to that of providing input for curriculum design.⁵⁷

The Action on Legal Aid brief to the Ontario government in response to the Report of the Task Force on Legal Aid (the Osler Report) argues strenuously that training should be done primarily on the job.⁵⁸ This group, which is principally composed of community legal workers, stresses on-going experience in clinics and problem-solving techniques rather than the lecture approach. This brief accepts much of the earlier American approach that training of community legal workers must be flexible and responsive to the needs of trainees and must, as far as possible, activate their natural advocacy skills. It is highly critical of using community colleges to train community legal workers. Community colleges are categorized as "large and flexible bureaucracies whose expertise is in the training of workers for private offices."⁵⁹ "We shudder at the prospect of a phalanx of community college grads, clutching damp diplomas, advancing on our committees."⁶⁰

Two approaches to the training of the public sector para-legal have developed: on-the-job training and classroom teaching. Those who advocate on-the-job training emphasize the need for participatory education and its capacity to allow observation, flexibility and a sense of independence. Those who advocate institutional training draw attention to the clinic's lack of time and expertise to undertake the difficult task of converting an interested citizen into a responsible community advocate. Yet the concern that institutional training will attempt to pour large amounts of black-letter law and precedents into the training and intimidate

the trainee's natural advocate skills cannot be ignored. Both approaches recognize the need to provide a base of substantive law on which the legal worker can function and agree that the emphasis must be on an effective clinical experience. Those advocating institutional training believe an institution is able to provide quality training, status, certification and unity among legal paraprofessionals and believe this will increase their acceptability. Community legal workers oppose this type of training on the basis that the community has no role in recruitment and that graduates are neither desirable to the community nor knowledgeable in comparison to existing community legal workers.

The question of the location of paralegal training programs is unimportant to trainees who are committed to the idea that the most effective skill development takes place on the job rather than in the classroom. Where such an approach is taken, the community is the school and the lawyer, the community leaders, the client and the trainee himself form the team responsible for his learning. Such an approach would require the development of ad hoc training facilities on a regional basis throughout Ontario. Training experts would be available to provide orientation for new community legal workers and to upgrade the knowledge and skills of more experienced personnel. Workshops would be developed for paralegals working in penitentiaries, mental hospitals and welfare offices. The workshop approach combined with on-the-job supervision ensures that the community legal worker is absorbing abstract materials and developing his/her skills. This method allows the

lay advocate to draw from his previous experience and to emphasize the non-legal aspects of community legal work.

An example of provincial training of community legal workers is the British Columbia Legal Services Commission which has undertaken a number of training programs for paralegal staff working in legal aid and community law offices. These programs were devised by the staff director of Training and Education with the assistance of an educational consultant. In January 1976 an extensive program was undertaken on the topic of "Law and the Disabled". The participants were given a two week program: the first week concentrated on exposing the students to the specific legislation pertaining to the handicapped,⁶¹ as well as to a discussion of matters pertaining to the handicapped;⁶² the second week of the program concentrated on improving the paralegal's case handling skills and specifically focused on handling of files, interviewing techniques, and problem solving. Simulations, case files and group discussions were utilized in this intensive and effective training program. Similar training sessions were held on other areas of substantive law including consumer and small claims and labour law.

Victor Savino in his paper, "Paralegalism and the Federal Government" submitted to the Department of Justice, Ottawa in April 1976 emphasized that the training for citizens' advocates the delivery of legal services in most instances came from outside sources such as the Department of Justice, Community Legal Services

plans, Opportunities for Youth funds to employ law students as summer teachers in manpower retraining stipends for indigent students on the program. Most of these funding sources have evaporated and we feel the future of citizens' advocates or specialized paralegal training is bleak. Savino also emphasizes the need for exchange of information between paralegal training programs so that duplication of training methods, training materials and training aids can be avoided. "There is a great deal of 'duplication' in paralegal training where projects in one part of the country are 're-inventing the wheel' so to speak in formulating initial training programs that have already been involved in another part of the country." He advocates working conferences of people involved in paralegal training, the publication of articles in major works on training paralegals and the development of resource centres such as those established in the United States under the Office of Economic Opportunity.

Savino emphasizes two other serious problems: the shortage of paralegal training and the need for accreditation of training program. The two issues are interrelated in Canada with paralegal training generally at a very unsophisticated and unorganized level. Law teaching is centred in the university law schools yet no Canadian law school has recognized any formal obligation to train paralegals or to provide teachers for them. Nor is there any program which trains people in the art of training paralegals. Savino states:

"There is no program anywhere in the country which trains people how to train paralegals - for that matter, neither is there any program which teaches lawyers and administrators how to effectively utilize the services of trained paralegals.

Finally there is the question of accreditation of training programs. These are obviously provincial education problems and would also be influenced by the regional differences as to legal systems in Canada's provinces and territories. However, accreditation is a controversial issue which needs close study and consideration, as well as a good degree of caution in implementation. There is a need here too for a national dialogue directed towards information and idea exchange and an effort to minimize interprovincial disparities in the paralegal occupations." /64

F. NATIVE COURTWORKERS IN ONTARIO

1. Introduction

Native people in this country face special problems in dealing with the legal system.⁶⁵ Some steps have been taken to attack the inequities caused by the cultural, linguistic, economic and geographic barriers between the native person and white society. The courtworker program represents a significant step by the native community toward measuring its capacity to cope with the legal system.

Courtworker programs began in Western Canada as early as 1962.⁶⁶ While non-Indian groups such as the John Howard Society have been involved, most of the programs have had native origins.⁶⁷ The major Canadian programs are Native controlled although financing is arranged through a joint effort of provincial and federal government departments. Only in Manitoba is the system government controlled. The courtworkers there are paid as civil servants.⁶⁸

It is the purpose of this section to outline the Ontario courtworkers program. The reasons for the high rates of native incarceration and recidivism are beyond the scope of this work. These issues are explored effectively elsewhere.⁶⁹

2. Administration of the Program

The Native Courtworkers Program in Ontario is co-ordinated by the Federation of Indian Friendship Centres. The program is part of an integrated system of social

services offered by this body to the native people of the province.

Since its inception in March 1972 the program has grown to include 23 courtworkers operating with an annual budget of \$420,000, funded equally by the federal Justice Department and the provincial Ministry of the Attorney General.⁷⁰ These courtworkers made 1868 court appearances and interviewed and assisted 6885 native persons in 1976.⁷¹

The Federation, as co-ordinator of the program, is responsible for "upgrading and maintaining the quality of service by conducting training programs and providing guidelines and support."⁷² The individual Friendship Centres, located in the urban centres of the province, are responsible for the courtworker service provided to the community served by the centre. Seventeen of the courtworkers work out of Friendship Centres and are therefore hired, and budgeted for, by the executive director of the relevant centre. The remaining six workers operate in isolated areas, such as Chapleau, which do not have Friendship Centres. These workers are hired and supervised by the Federation's courtworker program director.

Because the present role of the courtworker is shaped by recruitment practices and training, these areas will be discussed before the discussion of role.

3. Recruitment of Courtworkers

As stated above, this aspect of the program may be handled through the Federation or through the specific Centre.

The only fixed prerequisite to becoming a courtworker is that the applicant must be a native person.⁷³ The language skills required, the client's need to identify with his helper, the ability of the courtworker to present and understand the native perspective and the higher likelihood that the youth of the community will respect and accept only a native worker are all seen to justify this requirement.

The successful candidate for a courtworker position is likely to have had considerable involvement in social work oriented jobs in the native community. Ideally, the applicant will be a resident of the community he or she hopes to serve. These preferences result from the employer's desire to reduce the high rate of employee turnover. It is thought that an established pattern of community involvement will indicate a commitment to a betterment of the native cause and the cause of the particular community.

Generally the applicant should have had some work experience because it is felt that the uninitiated school graduate lacks the social skills required in such a potentially volatile job.

Education appears to be an important consideration in the selection of courtworkers. Since communication skills represent the most important talents a courtworker must possess, a relatively high level of education is a necessary asset. A certain credibility is lent to the position if the successful applicant has had some type of formal education.

The sex of the applicant does not appear to be a relevant factor in recruitment.⁷⁴

In fact, a lack of applicants for a given position may restrict selectivity. Positions must sometimes be filled quickly because of unexpected resignations or dismissals.⁷⁵

The positions are not widely advertised outside of the community in which the worker is required. Potential candidates hear often of the opening by word of mouth. Although positions have been advertised in local papers, the lack of a systematic recruiting effort reduces the number of potential applicants.

The salary of a courtworker is about \$10,000 per year plus expenses. While this represents a reasonable wage for a recent college graduate, it may not represent suitable remuneration for a candidate possessing the desired attributes. The public school teacher on the reservation, for example, would have to take a considerable pay cut to accept a courtworker position. Potential salary increases are also limited and may contribute to the high turnover of employees.

It is important that the potential courtworker be a person of integrity, without a criminal record. A courtworker charged with a criminal offence is seen as a blot on the integrity of the entire program.⁷⁶ Such individuals are prevented from entering the courtworker system.

The selection of courtworkers is undertaken jointly by head office and the local Friendship Centre. As

selection criteria are vague, it was difficult to assess the effectiveness of the selection. We would anticipate that greater local job definition would lead to a desire for a community oriented selection process.

4. Training

The training of a courtworker is the responsibility of the Federation.⁷⁷ Since no private or public institution offers a training program specifically for native courtworkers in Ontario, all newly hired workers must be trained from scratch.⁷⁸ At the present time the training given to courtworkers is quite weak. This is not surprising considering the enormity of the problems faced by the Federation. The need to have someone on the job quickly may preempt adequate training. The costs of transporting personnel over large distances are formidable. The training required may differ from one locale to the next. An urban worker, for example, may need different skills than one in a remote urban area. Ultimately, the Federation probably has insufficient resources to do the training job well.

Newly recruited courtworkers are often thrust into the job without any type of formal training or orientation period. Those individuals fortunate enough to spend a few days with the courtworker they are to replace may gain a limited exposure to the role they are about to play. In the typical case the recruit must learn the duties of a courtworker on his own. Because of the flexible definition of the role of the worker this may amount to allowing the untrained

individual to write his own job description. The new worker is free to pursue the general goals of the program by the means he finds the most effective. Learning by experience can be an effective method of training if the trainee is properly supervised and has been given clear goals. Unfortunately, the new courtworker may not be given clearly articulated goals.

The Federation is attempting to create a general training program.⁷⁹ The first phase of this proposal was carried out in March of 1977 when twelve senior courtworkers (1 year or more) were offered a three day seminar in Toronto. This program received a positive response from the workers who attended. It involved seminars on Family Court, the role of the courtworker, Criminal Courts, human rights, press and the media, and working with government officials.⁸⁰ Phase two of the program may not be implemented because of a lack of funding.

There are a number of weaknesses in the type of seminar offered in 1977. Only senior workers were invited and thus those with the greatest need of education were deprived of the opportunity of enhancing their abilities. The 3 day program involved only about eight hours of lectures or seminars.⁸¹ While it may be argued that informal discussion was of significant value, the costs of accommodation and travel might better be justified on the basis of a more intense program of formal lectures.

The Osler Task Force recommended that legal aid operate a training program for native courtworkers similar to those offered in Alberta and Saskatchewan.⁸² This six week course, if implemented, would represent a solution to the Federation's ineffective training regime. It would supply the financial support required to overcome the tremendous expenses involved in travel and accommodation. The program proposed is not likely to be started in the immediate future.

5. Supervision

The courtworker is virtually unsupervised. The immediate supervisor of those workers based in a Friendship Centre is the centre's executive director. The director has had no experience as a courtworker and no legal training. Supervision therefore amounts to the lending of moral support and the monitoring of hours worked. Where there is no Friendship Centre the courtworker is forced to work without any regular supervision. The Federation's program co-ordinator makes occasional visits to monitor the work of each courtworker; each worker will be visited once or twice per year.

Supervision does take other forms. The courtworkers are required to submit written reports on monthly activities to the Federation. These forms are of doubtful utility as supervision tools.⁸³ They may be required by the Federation principally for funding purposes.

The courtworker's work is constantly subject to evaluation by the native public and by co-workers. Duty

counsel, Family Court Judges, area lawyers and social workers are often able to make assessments of the weaknesses and strengths of a courtworker. In many cases such individuals make themselves available to advise the worker on legal matters if requested to do so. In more remote areas, the worker can judge his own value and performance by his acceptance in the community. Band chiefs and administrators may also be able to evaluate the worker's effectiveness. The good courtworker must clearly be a self-starter. Given the lack of proper supervision in the system, a tremendous emphasis must be placed on the hiring of self-motivating individuals. As it is not always possible to find such personnel, more effective regional supervision is probably required.

6. Role of the Courtworker

It is difficult to give an adequate definition of the role of the courtworker. In general terms it is the worker's duty to help to bridge the cultural and communication gaps which prejudice the Native person in the legal process. The Federation has stated that the courtworkers "assume the role of liaison between the Native people in trouble with the law and all persons involved in the judicial process; lawyers, crown attorneys, defense counsel, probation, aftercare and correctional officers."⁸⁴

These are broad declarations; a number of specific factors should be considered here. First, the courtworker program is offered in conjunction with other Friendship Centre activities. The Federation attempts to provide an integrated

program. Courtworkers operating outside the scope of a specific centre must necessarily operate differently.

Second, each courtworker serves a community of a different size. The two Toronto workers serve a transient Native population of about 35,000 while the Manitoulin Island worker serves a stable population of about 4000.

Third, community resource people such as social workers, child care workers, and alcohol counsellors are available in some areas and not in others. Many Ontario bands have their own social workers and counsellors. The courtworker is thereby freed to provide a court centred service while referring individuals to others more qualified to handle the social work component. Courtworkers unable to make such referrals may spend as much as 60% of their time handling work which is not legally oriented.

Fourth, some courtworkers have established themselves with court officials and are recognized by local judges as performing a worthwhile service. Others, faced with less sympathetic judges, and duty counsel, are unable to operate as effectively.

The general approach to courtwork is similar in most centres from Toronto to Chapleau. On a given court date (Provincial Court, Criminal Division) the worker will either phone for, or pick up, a copy of the docket. From this the worker makes a short list of the Native accused. This is done by selecting Native sounding names and accused familiar to the worker. Clearly this process may result in a significant

number of Natives not being assisted by the worker.

The worker notes the severity of the charge and the sophistication of the accused and then, based on these factors, decides whether the accused should be interviewed. Of the 9931 Natives noted by the courtworkers as having been charged in 1976 about 2/3, or 6885, were interviewed and assisted.⁸⁵ If an interview is to take place the worker attends at the cell area and explains to the accused his legal rights.⁸⁶ At this time the worker generally will ask the accused if he wishes the assistance of the worker. Some Natives refuse help. If help is requested, the worker will outline the need for a lawyer, bail application procedures and legal aid possibilities. In minor offences the worker may listen to the facts as presented by the accused and then seek out duty counsel to accompany him to a talk with the Crown Attorney.

The courtworker will act as a liaison between duty counsel and the accused so that the accused is made aware of duty counsel's role. If a court appearance is required, the worker may attend at the hearing to interpret or simply explain the proceedings to the accused.⁸⁷ In liquor charges the courtworker may speak on behalf of the accused to ensure the proper presentation of the personal background of the accused.⁸⁸

Often an accused will be required to make a further appearance at a later date. The courtworker in such cases may assist the accused in obtaining counsel, assist in communication between the accused and counsel, and assist in

the preparation of presentence reports. Although not a stated duty of the courtworker, the worker may consider himself responsible for chauffeuring the accused to court. Many workers also feel responsible for insuring that accused do not miss court appearances.

The role of the courtworker in the criminal process is perhaps more significant for what it is not than for what it is. The courtworker's function is largely limited to assisting the accused to understand the administration of criminal justice. Natives with experience in the legal system seldom require, nor are they offered, the worker's assistance. The worker does not go beyond the offering of assistance into the area of advocacy or representation. The Federation does not want the worker to go beyond that point and this is a matter for some frustration for senior workers. The Task Force on Legal Aid has recognized the restricted role of the courtworker in its recommendation that paralegals, with roles more legally oriented than courtworkers, be placed by legal aid, into Native communities.⁸⁹

The courtworker also operates in the Provincial Court, Family Division. It appears that some workers actively seek out members of the community who face Family Court hearings. Others wait for the party to make the initial request after making sure that the party knows that the service is available. Again the method of operation is dependent upon the size of the community served. In family matters the worker will explain the benefits of a legal aid lawyer. Where permitted

by the court, he may attend at the hearing and speak on behalf of a Native person who is unable to present relevant facts because of linguistic or cultural barriers. The courtworker will rarely take sides in a dispute involving two Native persons. In family matters the courtworker will often seek community assistance and attempt to keep families together.

The final duty of the courtworker enumerated in the Federation's pamphlet on the program is "To be available to give legal advice in areas where such advice is not easily obtainable."⁹⁰ The courtworker is poorly equipped to provide such a service. Some advice may be better than no advice. Still, the dangers of bad advice are very serious. While the courtworker may have some experience in minor criminal and family matters, issues involving landlord and tenant, welfare, and other matters resulting in civil litigation are beyond the current scope of most workers. In many remote communities these matters do not arise regularly because the Indian Band is the landlord, the administrator of welfare and often the arbiter of non-criminal disputes. In less remote areas the courtworker may refer the individual to duty counsel and legal aid.

The Task Force on Legal Aid recommends that unmet needs in civil matters be met by the para-legal personnel, not the courtworker.⁹¹ Should this recommendation be accepted, the Federation will be losing a potentially significant voice in the delivery of quasi-legal services to Native communities. The role of the paralegal should be broadly defined to include

representation, community education and liaison with other officers in the administration of justice.

7. Conclusion

There can be little doubt that the Federation of Indian Friendship Centres has done an effective job in creating a system of courtworkers throughout the province. This fact has been recognized by the Task Force on Legal Aid.⁹² The Federation now faces significant challenges in: acquiring and increasing funding; improving training programs; defining clearly the role of the courtworker; increasing the credibility of the courtworker in the eyes of judges and lawyers; recruiting suitably educated and motivated trainees; improving supervision and data collection; and finally increasing public awareness and acceptance of the validity of the program. These problems will not be conquered in the short term nor until increased funding enhances the prospects for effective recruiting, training and supervision.

Footnotes

1. Brickman, Lester, Expansion of the Lawyering Process Through a New Delivery System: The Emergence and State of Legal Paraprofessionalism (1971) 71 Columbia Law Review 1153.
2. Pearl, A. and Riessman, F., New Careers for the Poor, (New York: Free Press, 1965).
3. Supra, footnote 1 at p. 1168.
4. Earl Johnson, Jr., Justice in Reform the Formative Years of the OEO Legal Services Programme (Russell Sage Foundation New York, 1974).
5. Ibid., page 56.
6. (1964) 73 Yale Law Journal 1317
7. Silver, The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload (1968), 46 J. Urban L. 217.
8. 41 Notre Dame Lawyer 927.
9. Ibid., page 935.
10. R. White and J. Stein, Paraprofessionals in the Legal Service Programs: A Feasibility Study, Report to the Legal Services Program of the Office of Economic Opportunity (1968).
11. Ibid., at page 38.

12. Ibid., at page 39.
13. Ibid., at page 40.
14. Ibid., at page 40 and 349-50.
15. Ibid., at pp. 40 and 351.
16. Ibid., at page 43.
17. Proceedings of the House of Delegates of the American Bar Association, 54 American Bar Association Journal 1017, and 1021.
18. Vancouver, British Columbia Workshop on Paralegalism. March 31, 1978.
19. The exception to this was the recent requirement of ITT that the paralegals it hired have attended ABA approved schools.
20. Ibid.
21. Some law schools (i.e. Antioch Law School where Jean and Edgar Cahn are now co-deans) have refused to apply for ABA accreditation as it neither wishes to legitimate the ABA's right to accredit nor to go through the lengthy process.
22. See Barbara E. Lybarger, Retention of Paralegals in Legal Service Programmes: Initial Statement of the Problem, February 1978, Clearinghouse Review 858.

23. For material on the background of the Ontario Legal Aid Plan, see: I.A. McDougall and L. Taman, Legal Aid in Ontario: A Study in Symbolic Reassurance, Osgoode Hall Law School, Toronto (1969) (manuscript in law library); see also L. Taman, "Legal Aid in Ontario: More of the Same?" (1976), 22 McGill L.J. 369 at 369-373.
24. In 1976-77, 86% of all cases completed were criminal and family matters (Report of the Deputy Director, Ontario Legal Aid Plan, 1978).
25. See the recent evaluation of Professor Roland Penner of the University of Manitoba where he states that Saskatoon Community Legal Assistance, Dalhousie Legal Services in Halifax, the Point St. Charles Clinic in Montreal and Parkdale Community Legal Services in Toronto significantly affected the development of legal services in Canada particularly in regard to involving the role of the paraprofessional.
26. Thomson, Rogers opened its branch office in January 1972. After a six month evaluation the firm decided to terminate its direct participation in the experiment as of June 1973. People and Law attempted to respond to the unmet needs discerned by the Thomson, Rogers branch operation.
27. The reader will judge the extent to which the references to Parkdale Community Legal Services should be discounted given

that F.H. Zemans, a co-author of this working paper, was the founding director of PCLS.

28. Law Society of Upper Canada, Annual Report of the Ontario Legal Aid Plan 1971, page 11.
29. Ibid., page 12.
30. This Report became known as the Fairbairn Report. The sub-committee was composed of Patrick S. FitzGerald, Q.C., Chairman and Peter De Cory, Q.C.; and it was assisted by L. Fairbairn who was then the Assistant Provincial Director of the Ontario Legal Aid Plan.
31. Community Legal Services Report, The Law Society of Upper Canada, 1972, p.
32. The Law Society of Upper Canada had two representatives on the Task Force - Peter De Corry, Q.C. and George E. Wallace, Q.C. Other members of the Task Force were Dr. Daniel J. Hill, Alexander Ross, Professor Stanley Sadinsky and Mrs. Ann Scace. Ian Scott, Q.C. was counsel to the Task Force.
33. Report of the Task Force on Legal Aid, 1974, page 53.
34. Ibid., recommendation 15, page 55.
35. Ibid., page 53.
36. Ibid., page 377.
37. People and Law stressed the horizontal aspect of decision-making and emphasized that all staff members participated in administrative duties.

38. Roland Penner, The Development of Community Legal Services in Canada, August 1977.
39. Ibid., page 44.
40. Ibid., page 45.
41. Nova Scotia Legal Aid, Annual Report, 1974-75.
42. Cowie, in The Delivery of Legal Aid Services in Canada, Department of Justice, Ottawa, 1974.
43. S.S. 1973-74, c.11.
44. See Cui Bono. A Study of Community Law Offices and Legal Aid Offices in British Columbia, Ministry of the Attorney General, 1976, Vancouver, B.C.
45. See Norman Larsen: Legal Aid in Manitoba, The Law Society of Manitoba, 1977.
46. S.S. 1974, c.11.
47. S.M. 1971, c.76.
48. See J.W. Wade, Tort Liability of Paralegals and Lawyers Who Utilize Their Services (1971) 24 Vanderbilt L.R. 1133.
49. Victor S. Savino, Paralegalism in Canada: Response to Unmet Needs in the Delivery of Legal Services, p. 169.

50. "Relationship Between Clinic, Union and Clinical Funding Committee" by Susan Atkinson, prepared for the Clinical Funding Policy-Setting Sessions initiated by Parkdale Community Legal Services, June 1978.
51. Ibid., p.4.
52. Report of the Task Force on Legal Aid, Recommendation 41, p.124.
53. The class presently enrolled is the third class.
54. Interview with Bill Vine, Program Co-ordinator of Community Worker Program, George Brown College, June 1978.
55. Dalhousie Legal Aid Service, The Legal Paraprofessional in Canada - A Pilot Training Scheme, Halifax: Dalhousie University, 1973, p. 102.
56. Brickman, op.cit., p. 1235.
57. Ibid., p. 1245.
58. Action on Legal Aid, "Delivery of Legal Services: A Brief to the Ontario Government in Response to the Report of the Osler Task Force on Legal Aid", (initial version), p. 15.
59. Ibid., p. 15.
60. Ibid., p. 16.

61. Legislation was discussed in detail including the Human Rights Code Act; The Minimum Wage Act; The Public Schools Act, The Jury Act; The Marriage Act; The Social Assistance Act and Handicapped Persons' Act; The Immigration Act; The Mental Health Act.
62. The seminar concentrated on transportation, housing, employment, health care benefits, income security, architectural barriers, education, and recreation.
63. Savino, Paralegalism and the Federal Government, 1976. p. 23.
64. Ibid., p. 23-24.
65. Report of the Task Force on Legal Aid, Part II, Ministry of the Attorney General, Toronto, 1975; Bowles, R.P., The Indian: Assimilation, Integration or Separation?, Prentice Hall, Scarborough, Ontario, 1972; Morse, B.W., Native People and Legal Services in Canada, (1976) 22 McGill Law Journal 504.
66. Morse, note 1 at 530.
67. Bennett, M.C., The Indian Counsellor Project - Help for the Accused, (1973) 15 Canadian Journal of Corrections 1.
68. Morse, note 1 at 530.
69. See Morse, note 1: Report of the Task Force on Legal Aid, note 1.
70. Interview with Federation officials - June 7, 1977.

71. These figures supplied by the Federation.
72. Federation pamphlet "Native Courtworker Counselling Program".
73. Federation pamphlet.
74. During our visits we encountered more female than male courtworkers.
75. For an example of this note that the Cape Crooker courtworker was dismissed after being convicted of a serious criminal offence.
76. See note 11.
77. Federation pamphlet.
78. Fanshawe Community College has proposed a program to train Native Courtworkers for Ontario. See an unpublished proposal by J. Velenoff.

Prince Albert College in Alberta provided a training program in 1973. See Prince Albert Court Workers Course Evaluation.
79. The proposed program is based on proposal by Harvey Savage, the Community Legal Services Officer of the Ontario Legal Aid Plan and Dr. Dan Hill, the former Chairman of the Ontario Human Rights Commission.
80. New Directions for the Native Courtworker in Ontario - A Seminar for Senior Courtworkers, a brochure.

81. See Brochure, note 15.
82. Report of the Task Force on Legal Aid, note 1, at page 6.
83. Federation officials admit that many workers do not take the business of data collection seriously. This was borne out by our visits to courtworkers throughout the Province.
84. Federation pamphlet.
85. The figures supplied by the Federation.
86. This is the first specific duty set out in the Federation pamphlet.
87. This is the second specific duty set out in the Federation pamphlet.
88. This is the third specific duty.
89. Report of the Task Force on Legal Aid, note 1, at page 9.
90. Federation Pamphlet.
91. Report of the Task Force on Legal Aid, note 1, at page 4.
92. Id., p. 6.

XIII. The Institute of Law Clerks

Footnotes

XIII. The Institute of Law Clerks¹

In 1967, there were approximately thirty-four law clerks working for firms in Toronto and about half that number in the rest of the province. These early clerks, perhaps prompted by the English origins many of them shared, desired a professional association similar to the English Institute of Legal Executives. They sought, and still seek, eventually to become the governing body of law clerks in the province.

A group of law clerks approached the Law Society in 1967 with a view to pursuing this end with Law Society assistance. The Law Society did agree to support the incorporation of the association, subject to the inclusion of a specific prohibition in the letters patent of the Institute to the effect that it would not become a bargaining agent for its members or otherwise act as a trade union. Notwithstanding their preference for the term 'Legal Executive' the Institute was obliged to accept the 'Law Clerks' appellation. They continue to feel this to be inappropriate terminology. In return for these concessions, the Law Society agreed to support the incorporation, to have its secretary sit as an ex officio member of the Institute and to assist the Institute in its work.

The Institute presently enjoys an enrollment of some 300 members. Each of these, in order to be eligible for membership must satisfy the Institute's definition of 'Law Clerk'² and must be in the full-time employ of a lawyer or law firm. The Institute argues that its membership forms "a high percentage of the bona fide Law Clerks employed within the province". This is impossible to verify given the lack of definitional accord on who is and who is not a 'law clerk'. The Institute would not dispute the contention that there are large numbers of persons employed by law firms who perform paralegal work who are not in fact members of the Institute. It is perhaps significant that our interviews disclosed that few lawyers knew whether their employees were members of the Institute. Membership in the Institute was apparently not a factor considered in hiring law clerks.

It may be fairly said that the Institute is still in the early stages of pursuing its primary goal as set out in its Preliminary Brief to this Committee:

" . . . to advance the status and interests of Law Clerks with particular emphasis on education and advancement to increase knowledge, skill and proficiency of Law Clerks." /3

Nonetheless, it appears to have been very active in pursuing these goals. It has financed the preparation of a basic training

course first introduced in 1969 which has influenced course development at the community college level. It has begun the preparation of a program of advanced level specialization courses to be offered by correspondence.⁴ Satisfactory completion of work at this advanced level would be a precondition to achieving Fellowship status, the highest rank in the Institute.

The Institute no doubt feels that it is capable of governing the occupational group of law clerks and that it is the appropriate organization to perform the task.

Footnotes

1. Much of the descriptive information in this part is taken from the Preliminary Brief of the Institute of Law Clerks of Ontario to the Ontario Law Reform Commission, Professional Organizations Project, 1976 (unpublished, on file at the P.O.C. office).
2. "Law Clerk" means a trained specialist, capable of doing independent legal work, which may include managerial duties, under the general supervision of a Barrister and/or Solicitor and whose function is to relieve a Barrister and/or Solicitor of routine legal and administrative matters and to assist him in the more complex ones.
3. Institute of Law Clerks of Ontario, Preliminary Brief, op.cit., p.1.
4. A Study Manual for the Fellowship Course in Contracts is on file with the P.O.C. The Institute hopes to aim these courses at an academic standard 'comparable to the final year of law school'.

XIV. Related Occupations

A. Introduction

B. Insurance Claims Adjusters

1. Organization

2. Role

3. Recruitment

4. Training

(a) Independents

(b) Staff Adjusters

5. Supervision

(a) The Company

(i) Organization

(ii) Audits

(iii) Customer Complaint

(iv) Authorization

(v) The Reserve

(vi) The Independent Adjusters

(b) The Superintendent of Insurance

C. Patent Agents

1. Introduction

2. Organization

3. Recruitment

4. Training

5. Regulation

(a) Commissioner of Patents

(b) The Patent and Trademark Institute of Canada

(c) Client Control

(d) The Courts

D. Union Labour Arbitration Representatives

1. Introduction

2. Role

3. Recruitment and Training

4. Supervision

Footnotes

XIV. Related Occupations

A. Introduction

It is easy to think of legal work as being the work that lawyers do. The market for legal services becomes the market for lawyers' services. Legal paraprofessionals, in this analysis, are persons providing support services to lawyers. This is the "lawyers'-eye view" of the matter.

This perspective overlooks the large numbers of persons in the work force who are neither lawyers nor persons working under the control of lawyers in private practice whose work brings them in contact in an organized way with the legal system. Such persons do work which is like that of lawyers in that its core involves working with a set of legal rules. This is the 'hidden market' for legal services, insurance claims adjusters, patent agents and trade union representatives are only three examples of persons whose work is predicated on some understanding of applicable legal rules.

It was not part of our mandate to study in detail this 'hidden market'. We were interested, however, to examine what these workers actually do to give us some idea of the range of law tasks non-lawyers might successfully perform. We approached this work anecdotally, interviewing in each case three or four persons involved in the fields of insurance claims, patents and trade union work. The material which follows will show that non-lawyers in the hidden market perform a wide variety of law jobs under widely varying supervisory and regulatory structures.

B. Insurance Claims Adjusters

In 1975, the cost of settling claims against automobile accident insurers amounted to some \$64,000,000 in Ontario.¹ This amount, representing 14% of the total payout for that year, went to pay approximately 1,000 "independent" (self-employed adjusters) and an unknown number of claims experts employed by insurers.² Their work involves the application of legal rules, particularly of tort and contract, to the cases presented by claimants. Largely without the benefit of lawyers' advice, the claims experts determine whether insurers are liable under their contracts of insurance and in what amounts. Because of the surface similarity of their work to that of lawyers, we undertook an investigation of their role.

1. ORGANIZATION

Insurance claims in Ontario are processed by both "independent", self-employed adjusters and the claims staff of the insurers. The staff adjusters are specifically exempted from the licensing requirement imposed on the independents.³ The licensing requirement is conditioned on applicants satisfying modest government imposed standards (see below). As the staff adjusters are responsible only to their employers, no standards are imposed on them.

The major insurers currently retain independent adjusters principally where claims arise in remote areas. Occasionally, an independent will be employed where some special expertise he possesses may be required. Smaller insurers make greater use of independents to compensate for smaller in-house staffs.

2. ROLE

The independent and staff adjusters exercise essentially the same role in the claims settlement process. In general, the adjuster attends at the scene of the alleged loss to determine initially whether or not there has been a loss. This he does by physical examination of the property or by the examination of doctor's reports in the case of personal injury. He will also attempt to determine how the loss occurred and whether or not it is covered by the applicable contract of insurance. His investigation of the details of the accident and his file of witness statements where these have been made available form the basis of his determination as to whether or not the loss is insured. By consulting his own experience in the field or the expert opinions of doctors, appraisers and estimators, the adjuster comes to a view of the amount of the loss. He will then normally seek to settle the claim by payment negotiated with the claimant or his lawyer. In cases of claims exceeding his authorization level,⁴ the adjuster will make a recommendation to his superior as to an appropriate settlement in all the circumstances. The adjuster, it will be observed, is the agent of the insurer and in no sense either a broker or the agent of the claimant. In this sense, the term "independent" is misleading and its abolition has been recommended.⁵ At the same time, the special relationship which the law holds to exist between an insured and the insurer or its agents will require the adjuster fairly to represent the insured's interest.⁶

Recent study indicates that the independent adjusters may well be doomed.⁷ The number of automobile accident claims in Ontario has apparently been reduced by lower speed limits and legislation requiring the use of seat belts. Agreements recently negotiated between insurance companies do away with the need for determination of negligence in property damage claims, further reducing the need for adjusting services. As well, the advent of telephone adjusters and appraisal centres for the handling of simple claims further limits the adjusters' role.

There is some indication of problems in the quality of work produced by the independent adjusters which may have implications for our concerns in this working paper. In particular, it has been suggested that the monopoly enjoyed by the independent adjusters, particularly in smaller communities, led in many cases to the shoddy handling of too many claims with too little attention to sound practice and too much attention to exacting the highest possible fee.⁸ The insurance company claims managers still complain about poor quality work in many smaller centres and are presently taking action to increase staff adjusters to fill the gap.

3. RECRUITMENT

Most adjusters are recruited into the industry by the major insurers. The independent adjusters recruit their staff largely through raiding the claims departments of the insurers.

A starting salary for the most junior claims person may be as low as \$8,000 to \$9,000 per annum. The response to recruitment programs, largely conducted through newspaper advertisements, is principally from those without university education although the number of university trained persons taking such work appears to be increasing in a tightening economy. The average applicant is between the ages of 20 and 40, probably has at least a grade 12 education and would preferably have some work experience. Except in the case of telephone adjusters, whose responsibility is limited to settling claims arising out of minor motor vehicle accidents, the recruitment process appears to result in the creation of an overwhelmingly male work group.

Applicants are normally screened by a series of aptitude and psychological tests, carried out by personal departments and professional testers. The object is to seek out those candidates with the required intelligence, ability to work with people and dependability and to screen out those lacking proper motivation and communication skills.

It appears that the intention of the major insurers is to recruit people for lifetime work in claims. At the same time, the structure of many companies appears to work to counteract this original intention. It will normally be in the long term interests of the employee to move out of claims into management or underwriting. There is, however, a feeling that salaries for adjusters have fallen behind salaries for comparable positions at least in the public sector. This may result in the recruitment of poorer trainees. The American pattern of recruiting principally from "second class" law schools has not been duplicated here. There was, nonetheless, more than one

indication that the insurers would find it useful were the education system to supply them with persons already possessed of some degree of familiarity with the working of the legal system and its rules.⁹

We were advised that the independent adjusters offer lower salaries than the insurers to trainees out of high school. The difference is thought to be justified by the fact that the licensing scheme requires a two-year training period of independents (see below), during which time the trainee is not a money maker. The staff adjusters, as is discussed below, apparently receive training which is rather shorter.

4. TRAINING

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(a) Independents

The minority report of the Singer Committee states that "the present training system for independent adjusters. . . is quite thorough".¹¹ The concerns reported above with respect to poor work on the part of independent adjusters are not, however, entirely consistent with such a claim. Indeed, our information indicates that the training received by the independent adjuster would normally be exceedingly flexible and perhaps quite undemanding.

The trainee independent adjuster will normally have had some training with the major company. His first step (see Table 1 at the conclusion of this section) in becoming an independent adjuster would be to make an application for a license under section 350 of The Insurance Act. The procedure as set out by the superintendent most importantly requires that there be some licensed adjuster prepared to supervise the trainee. A letter of authority would then be issued authorizing the trainee to work under the supervision of his

principal. The fact that the supervisor's own license is liable to be revoked by the department is calculated to guarantee that the principal exercise effective supervision over a student.

It appears that the most important instruction received by the trainee comes in the form of "tagging along" with his supervisor. It is understood that the trainee will handle only minor claims during his first year and that he will not conduct any settlement negotiations. This system becomes more problematic as insurers develop procedures for settling minor claims without recourse to independent adjusters.

Along with his letter of authorization, the trainee receives a book entitled Questions and Answers for Examiner for Applicants for Insurance Adjusters License (produced by the Ontario Ministry of Consumer and Commercial Relations). Theoretically, the trainee should have read a considerable amount of outside resource material, which is readily available, because the book contains only a brief text and a multitude of questions and answers. In practice, however, this candidate could better spend his time memorizing the questions and answers of which a selected group will make up the examination. This three and one-half hour examination for a Probationary Licence is held by the Ministry of Consumer and Commercial Relations, one year after the issue of the letter of authorization. It covers all areas of insurance and is made up, as indicated, of a selected series of questions from the above-mentioned book. The successful candidate must attain an 85% score in order to pass the exam and will then receive a probationary licence which entitles him to work at his trade in all lines of insurance.

During the second year, the trainee continues to work under supervision, although in practice a supervisor will give a trainee

more leeway as he gains confidence in the quality of work done. At the completion of a second year of supervision, the trainee sits for an oral examination before an Inquiry Panel composed of industry experts. In preparation, the candidate will examine Fellow of the Insurance Institute of Canada course material and other texts. If successful, he will be licensed to practise in all lines of insurance. He may, if less successful, be issued a restricted licence to practise in some areas but not in others. The unsuccessful candidate may re-sit all or part of the examination every six months.

The licence issued at this point entitles the holder to practise as an independent only under an employment agreement with an independent who holds a Proprietor's Licence. This latter licence requires five years experience as a licensed adjuster and proof of financial stability.

This scheme theoretically requires a seven-year period prior to having the right to act on one's own account as an insurance adjuster. In practice, it appears that there are a number of informal mechanisms available for cutting down the various periods. There are indications that individuals have managed to shorten the whole period to as short as three years. As well, the suggestion is made that all-lines licenses are more readily given to trainees who wish to practise in outlying areas. If this were so, it would, of course, be doubly dangerous because these persons would typically have less opportunity for effective consultation with more experienced adjusters. Although continuing education programs are available through the Insurance Institute of Canada, it appears that well under half of the licensed adjusters pursue these opportunities.

(b) Staff Adjusters

The trainee staff adjuster generally receives a head office training program designed by company staff.¹² The program will vary greatly from company to company. It may vary in length from three weeks to three months. Instruction will be given on a wide range of subjects from law to medicine to public relations. Lectures and simulation techniques are employed. Texts provided by the Insurance Institute of Canada are a primary source of material; in some companies casebooks may be prepared by senior staff. In many large companies, there may be no requirement whatsoever that the staff adjuster avail himself of the opportunities which do exist for continuing education. One investigator was sufficiently concerned about the quality of training received that he recommended that insurance companies be obliged to present for licensing examination¹³ employees who are to deal with the public on claims. A second authority reported that:

"We place most of the blame for the unhappy situation in which insurers find themselves on their complete and surprising neglect of the development of a truly competent core of adjusters who have sufficient authority to do their job and who are concerned not only with the adjustment of claims but also with the reaction of the public to their represented activities."/¹⁴

5. SUPERVISION

It is of course in the interest of the insurance companies that adjusters employed or retained by them discharge their duties competently. The licensing system for insurance companies presumably adds some additional incentive in this regard. The adjuster in the field is therefore supervised at two different levels.

(a) The Company

(i) Organization

The claims departments of the major insurers are headed by one or more claims managers holding the ultimate authority to bind the company to a settlement of a claim. Examiners, working the either or both of the head office and regional offices, depending on company structure, are responsible for examining large claims, problem files and for spot-auditing the work of the field adjusters.

(ii) Audits

It appears that audits are done on a regular basis. An examiner will assess a selected number of files with the staff adjuster looking for patterns or errors in notation or technique. The review will culminate in a meeting in which the examiner will discuss his findings with the adjuster and indicate areas in which improvements must be made. A report on the adjusters work will go to the claims manager. This type of supervision is, of course, after the fact and essentially a form of training.

(iii) Customer Complaint

Sound public relations dictates the prompt investigation of any customers' complaint involving an adjuster's conduct.

(iv) Authorization.

Each member of the claims staff will be authorized to settle claims on his own authority up to a fixed dollar limit. As the adjuster gains experience, his authorization increases. A typical five-year adjuster in the field would have an authroity in the \$7,500 to \$10,000 range. The larger claims are thus handled, or at least supervised, by more experienced personnel. The dollar value of the claim will not, of course, in every case accurately

reflect its complexity. Nonetheless, it does apparently result in an efficient system in which the most experienced personnel are not burdened by minor claims which are settled by the lower level. Interestingly enough, there are no lawyers in the chain, even at the very highest level where the claims manager will normally have unlimited authority.

(v) The Reserve

Normally, when a claim is made the examiners will, for internal financial purposes, fix a notional amount at which the claim might be settled. Although the reserve figure may exercise some influence on the adjuster's exercise of his authority to settle a claim, it is normally not a binding consideration inasmuch as the figure is one selected more for financial planning purposes than settlement purposes.

(vi) The Independent Adjusters

Although independent adjusters are not supervised through the same channels as staff adjusters, a supervisory role is exercised in the actual selection of the independent. As well, independent adjusters normally have no authority whatsoever to settle, but only to make recommendations to the claims department. Although the independent's conduct is controlled ultimately by the threat of a revocation of his licence, the real control probably does lie in the hands of his employer insurance companies.

(b) The Superintendent of Insurance

Independent adjusters are directly regulated under The Insurance Act.¹⁵ The power to revoke a licence, which is subject to appeal,¹⁶ provides the Superintendent's power of enforcement. It is not known to what extent the power is in fact used. The majority

report of the Singer Committee found such supervision to be unnecessary and would have preferred that control on independents be maintained by their employers -- the insurance companies.

The insurers themselves are liable to action by the Superintendent for improper conduct of their adjusters.¹⁷ The ultimate sanction of cancellation of a licence has apparently never been used. The Singer Report indicates that the power of the Superintendent in this regard might be better implemented were the broad definition of improper conduct in s. 388 of The Insurance Act replaced by more explicitly defined offences.

C. Patent Agents

1. INTRODUCTION

For centuries, inventors have been concerned to avoid the generalized use of their inventions without compensation. The system of patents is essentially a limited state monopoly granted to the inventor in return for his making public his invention. The system is thought on the one hand to provide incentives to research and development while at the same time granting public access to technological innovation.

The patent agent^{18,19} is a central figure in the process of applying for patent protection. His or her work breaks down into three principal parts. First, the patent agent will prepare and file the original application for a patent. Second, the patent agent will prosecute the patent, guiding it through the rigorous examination to which it will be subjected by the Canadian Patent Office prior to the issuance to the patent. Second, the patent agent will prosecute the patent, guiding it through the rigorous examination to which it will be subjected by the Canadian Patent Office prior to the issuance of the patent. Third, most patent agents will spend a significant minority of their time formulating opinions on the validity of proposed patents or the alleged infringement of existing patents.

Typically, the patent agent receives clients both directly and on lawyer referral. The agent will take the details of the invention from the client. This task will frequently require a significant degree of comprehension of the applicable scientific principles. If the client is the inventor and this the first country in which a patent has been sought (apparently only about 5% of all cases), the task of preparing the application is a substantial

one. It may require detailed diagrams of the invention as well as a skillfully-worded description of the apparatus or process and the claims associated with it. As well, the agent will conduct or cause to be conducted a search of the jurisdictions in which it sought to obtain patent protection. In a typical case, a Canadian and American search would be made. If the client rightly saw a significant foreign market for the invention, wider searches would have to be conducted. Those searches would indicate whether or not, in the opinion of the agent, the invention at hand is sufficiently different from those already patented to warrant the seeking of patent protection. In this regard, the organization of the application and the specific form of words chosen are of particular importance.

Once the application has been filed, the federal examiners in Hull, Quebec will review the application, search and review the similar patents, decide if the invention is deserving of patent and notify the agent of the acceptability or the deficiencies of the application. At this point, the prosecution begins. If deficiencies have been found, the agent will normally review the finding and, may after discussions with the client, revise the application or re-submit the same application with arguments in support of its validity. An examiner will then re-examine the application and this process will continue until the patent is either rejected or allowed. The agent may have occasion to attend the examiner's office in person for an informal hearing if he feels that the application could be more easily explained by discussion. An adverse decision may be appealed to the Commissioner of Patents in a proceeding which is equally informal. An adverse decision at this level could be taken to the Federal Court, where only lawyers

and not patent agents are entitled to make submissions. It appears that appeals are seldom, if ever, taken to this level.

Patent agents may also give opinions on the validity of an existing patent or on the alleged infringement of existing patents. Although this is thought to take up only a relatively small percentage of an agent's time, this area is most fertile for litigation. The patent agent may give the first opinion on whether or not a matter should be taken to trial. If a matter is referred to outside counsel, the lawyer will typically deal directly with the client. The patent agent at this stage may have no involvement at all. In exceptionally complex matters he may advise the lawyer on technical matters. Some lawyers in the field would use patent agents in much the way counsel might employ the services of a junior.

The patent agent may also work outside the area of patents, in trademarks and industrial design. This work is thought on the whole to be rather simpler than patent work; law firms often tend to it through the use of law clerks.

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Patents are a matter of federal jurisdiction. The only regulation of patent agents the federal government has seen fit to put in place is the requirement that persons wishing to represent inventors before the Patent Office be registered under the statute. All services apart from the prosecution of patents may, as far as can be determined, be lawfully provided by any person who may work totally unsupervised and unregulated, except to the extent that such a person might stray across a gray area into the practice of the solicitor. 21

2. ORGANIZATION

The patent agent may deliver his services to the public through a number of different systems. Patent agents may practice on their

own or in partnership with other patent agents. As the exploitation of a patent involves matters not directly pertinent to the law of patents (such as corporate organization and re-organization, contracts, taxation, etc.), a firm of patent agents may, if it is not to stray into the unauthorized practises of law, be obliged to refer many of these important matters to law firms. It is for this reason that it has been suggested to us that a firm of six or seven patent agents would normally have enough legal work to occupy fully the attention of a lawyer. It is probably for this reason that a number of mixed firm systems have developed. First, a patent agent firm may be affiliated with and occupy the same office as a law firm. As a lawyer may also practise as a patent agent, a lawyer might well be a principal in each of these firms. One of the largest organizations of lawyers and patent agents in the city of Toronto is fashioned on this kind of organization. Equally, it is not uncommon for a law firm to employ patent agents in its patent department. Lastly, the patent agent may work directly as the employee of a corporation.

3. RECRUITMENT

The Patent Rules made, and The Patent Act, do not set a minimum educational standard for applicants who wish to write the examination which is the pre-requisite to registration with the Patent Office and the concomitant right to prosecute patents as the representative of the inventor. Although barristers and solicitors who would take the examination are not formally required to have any particular educational qualification, others must have worked under the supervision of a registered agent. The period required is reduced from three years to eighteen months for those with university degrees in science or engineering. In practice, the examination is

difficult enough to make it impractical for a supervising agent to take on as a trainee an individual who has not demonstrated the ability to function at a university level. It is thought that most if not all registered agents in Canada have some type of science degree.

Approximately one-half of all patent agents are lawyers. The others, in order to be registered, must have worked for varying periods under the supervision of a registered agent. All of our interviews indicated that they would not consider hiring a non-lawyer trainee. It appears that most such persons would be trained by very large patent firms, such as the Gowling, Henderson or Smart, Biggar firms in Ottawa, or by large corporations such as General Electric. None of the three firms we visited would consider recruiting a trainee agent. One lawyer suggested that were he looking for a trainee agent, he would go to the United Kingdom and seek to bring over a patent agent who was already trained.

4. TRAINING

A non-lawyer candidate for the examinations must first gain employment with a registered agent, a firm of agents, or a law firm employing agents.²³ The training given articled clerks and junior lawyers preparing for the examination is similar to that given to non-lawyers. During the period of supervision, the trainee will learn by experience. Generally, no lectures or seminars are provided by employers. The trainee carries out minor tasks under the supervision of a superior. Much of the learning which takes place comes from working in collaboration with a supervisor. The educational experience received by the trainee will accordingly vary substantially according to the ability and interest of his supervisor. Although some training

may be carried out by lawyers, firms would probably seek to train agents through agents in order to lower the cost of training.

Each year, the Commissioner holds his registration examinations in October. During the weeks before the examination, the Patent and Trademarks Institute (see below) holds seminars for candidates. The Institute forwards to each candidate a list of sample examination questions. The trainee is invited to complete the questions and to mail his responses to the Institute for marking and comment. After the completion of this process, the Institute holds two weekend seminars, usually in Toronto or Ottawa, at which time registered agents are available to answer questions on the sample examination or other areas of concern. These seminars do not take the form of lectures and are thought to be most useful. This is the entire formal program offered to trainees in preparation for the examination.

The examination is set by a Board comprised of members from the Patent Office and two members from The Patent and Trademark Institute of Canada. Approximately thirty to forty students try the examination in a given year; of these, approximately 50% fail.

5. REGULATION

There is no firm regulatory framework in place regulating the activities of patent agents. The principal sources of constraint on the activities of agents are as follows.

(a) Commissioner of Patents

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The Act and Rules made thereunder give the Commissioner of Patents wide powers to refuse or discontinue the recognition of any patent agent who has been guilty of gross misconduct or incompetent practice. It is suggested that this wide power is not

used to any great effect by the Patent Office. There have apparently, for example, been instances in which the Institute acting under its charter has expelled members for misconduct while the Commissioner has taken no action. On the other hand, another source of information suggested that the Commissioner would normally follow the direction of the Institute in such matters.

Apart from this problem, on which we have no firm data, it is to be noted that this regulatory power is operative only with respect to those individuals who would prosecute patents. The typical patent agent probably spends somewhere in the order of one-third of his time in this role. The rest of his activities, both in the preparation of applications and in the giving of opinions, together with his work in the trademarks and industrial design fields, is entirely unregulated. All steps in these latter matters can be carried out by a non-agent who then, in the case of a patent matter, has the inventor himself prosecute the patent before the Patent Office.

There is at least one group of so called "Inventors Agents" in Canada who are subject to no regulation whatsoever. As might be anticipated, it is suggested by those who are regulated that their unregulated competitors are guilty of a number of unethical practices including the charging of exorbitant fees and the encouraging of plainly unpatentable inventions. We have no evidence to affirm or refute this allegation.

(b) The Patent and Trademark Institute of Canada

In addition to its limited role as an educating body, the Institute plays a role in enforcing a Code of Ethics. It appears that virtually all patent agents are members of the Institute. It was suggested to us that an individual who was not a member would have

great difficulty in obtaining employment. As of December 1, 1975, the Institute had four honorary members, one emeritus member, 171 fellows, 130 associates, 75 affiliates and about 200 non-resident members. Approximately 50% of the membership are lawyers and some 25% are not patent agents. There was disagreement among our informants as to whether or not expulsion from the Institute would result in a discontinuance of recognition at the Patent Office.

(c) Client Control

It is to be observed that only about 5% of all patent work in Canada involves original Canadian inventors.²⁵ Accordingly, the agent is normally dealing with sophisticated clients who will already have received patent protection elsewhere and who can be expected to demand a high quality of work from the agents. Of course, there are firms, one of whom we interviewed, who specialize in dealing with small Canadian inventors who might not be subject to the constraints of the sophisticated client.

(d) The Courts

As with any other kind of agents, the patent agent is required to behave in accordance with the standards of the normally competent agent. Failure to do so could result in a successful action for negligence. None of our informants was aware that such a suit had ever been successful in Canada. On the other hand, patent agents in Canada have not been able to get insurance coverage at a reasonable rate. The Institute has not as of this date been able to provide such insurance and the negligent agent would be personally liable for his negligence inasmuch as patent agents, like lawyers, are not permitted to incorporate.

D. Union Labour Arbitration Representatives

1. INTRODUCTION

For the unionized worker, the Collective Agreement is the touchstone of his relationship with his employer. It sets out the terms and conditions of his employment as agreed between the employer and the union. In the negotiation of these terms and in litigating their alleged breach, the trade union member depends on personnel provided by the union. We propose briefly to examine the role of trade union personnel in the arbitration of grievances arising under the Collective Agreement.

2. ROLE

Recent data indicate that trade unions use the services of lawyers in approximately one-third of all arbitration cases. This figure rises to approximately 42% in cases involving the discharge of an employee. The data indicates that lawyers are more likely to become involved as the cases become more serious.²⁶ In all other cases, the union member would be represented before the arbitrator or panel of arbitrators by a representative of his trade union. In some unions, this person would specialize in grievance arbitration and would be substantially free of other responsibilities. In other cases, each grievance would be prosecuted by the representative responsible for a given local or part of a local. Grievance arbitration would likely take up a minority of his time.

As either a specialist or a generalist, the trade union representative given responsibility for the prosecution of a grievance exercises skills virtually identical to those expected of a practising lawyer. He might well be involved in the case well before the hearing. Here, he would be expected to have some role in negotiating a settlement.

Were this not possible, he would proceed in the normal way to digest the facts through interviews of witnesses, to familiarize himself with the applicable law through an examination of the precedents and to prepare his case for presentation and argument before the Board. The skills involved are those of the advocate who practises before the courts.

At the same time, a number of factors are worthy of note. First, lawyers are systematically involved in the process of grievance arbitration and, it is thought, typically in the most difficult cases. Second, those trade union representatives we were able to interview indicated that they had fairly ready access to the services of a lawyer for consultation purposes. Third, the impact of using a lawyer as counsel in arbitration matters has recently been studied by the Labour Council of Metropolitan Toronto.²⁷ These data appear to show a marginally better success rate for both union and management when the services of a lawyer are utilized instead of those of a lay person. Of course, these figures could not be dispositive of the relative abilities of these two groups without better data on the question of when the decision is taken to brief a lawyer rather than a union representative and in what kind of case. Certainly the abilities of both lawyers and trade union representatives vary substantially. One would not be surprised to discover trade union representatives who were thought to be better at this type of work than most lawyers, certainly than most non-specialist lawyers.

Last, it ought to be pointed out that the grievance arbitration system is meant to be an informal and expeditious dispute resolution mechanism. To a certain extent it is no doubt in the interest of both unions and management to maintain an informal,

common sense approach particularly suited to the talent of the experienced non-lawyers. Nonetheless, one principle of fairness which could not be overlooked without creating difficulties in the long term is the principle that like cases be treated alike. This raises the spectre of participants in the process being obliged to be thoroughly familiar with the applicable precedents. One major union has noted that the result of an ever-rising number of written opinions in arbitration matters is that increasingly more expertise is required to present a case adequately. As the problem of searching for and dealing with the precedents becomes more commonplace, it is suggested that unions are forced to hire lawyers more frequently. This undermines to some extent the aim of a cheap and expeditious system of dispute settlements. It is certainly beyond the scope of this work to deal with the question of just how legalistic the grievance arbitration approach need be. It is, however, an interesting example of the interplay between legal technology and legal personnel. It is yet another instance in which the complexification of the applicable technology slowly excludes the non-lawyer from the dispute settlement arena. At least some of the participants in this process do not see this as a desirable result.

In the case of Tripartite Arbitration Boards, the union and the employer each nominate a representative who in turn select a neutral chairperson. The union nominee is very often a union staff member himself.²⁸ Experience at presenting cases to arbitration boards is a natural training for the job of union nominee on such boards. There are some union staff members and some freelance persons who spend the larger part of their time acting as union nominees. The time commitment involved is normally only the commitment to the hearing itself. The only preparation required is the consultation with the employer nominee for the purpose of

selecting a chairman and making the physical arrangements for the hearing. The union nominee may as well be an important source of expertise in the prosecution of the union's case in that, at the hearing, he may exercise an active role in asking questions and bringing out evidence.²⁹ After the hearing, the nominee can be expected to discuss the case with the other members of the Board and to try to put the union's case at its highest. Indeed, he will sometimes write a decision before the chairman has made his decision and submit it to the chairman in an attempt to support the union's position. He may eventually sign the chairman's award or submit a dissenting opinion. In either case, it seems reasonably clear that this participant in the process is well placed to compensate for whatever lacks may be seen in the trade union representative charged with prosecuting the case.

3. RECRUITMENT AND TRAINING

In most large industrial unions, staff members will typically be members of the union who have been involved at the local level as either stewards or as presidents of locals. This is, of course, not a hard and fast rule. It is clear that non-members are hired on occasion. Nonetheless, it is doubtful whether on the whole a significant amount of labour arbitration work is being done by persons without reasonably lengthy experience in the trade union movement. It is possible, of course, that over time the dedication to the trade union movement which was so common in the generation of individuals presently nearing the end of their careers may be found in younger members only with great difficulty. In these circumstances, it is entirely possible that a professionalization of these roles may take place.

There appears to be little difficulty in finding people from the ranks to take on union jobs. It has been suggested that people are attracted to the union staff by the greater freedom in the organization of their work life, the prestige, the power, the money and the satisfaction of helping their union. While several of the individuals we interviewed had university level education, it seems more likely that most persons involved in work of this kind would not. It would no doubt be more typical for individuals to have been trained in the "school of hard knocks". It appears that on all levels trade union officials learn their work through experience rather than through formal training. In the specific context of labour arbitration, there was some concern expressed to us as to whether or not the existing mechanisms for training were at all adequate. Some unions, for example, would send their personnel to training sessions of week-long duration from time to time. Others would have a new person "tag along" with an experienced person after which he or she would be on his own. Whatever prejudice might otherwise be thought to be caused to the union member represented by an inexperienced and under-trained advocate might well be minimized, as indicated above, by the interventions of the union nominee on the Tripartite panel.

4. SUPERVISION

Apart from the very close supervision received by the beginning advocates, it appears that people active in this process are very quickly on their own. The case-oriented and specialized work does not lend itself readily to close supervision. In any event, many unions would be structured in such a way that the notional superior would be more an administrator than a supervisor of

case work. Indeed, as indicated, in many unions the case work would not be the principal occupation even of the individual doing it. Some unions would have quite close contact with legal counsel from whom advice could be sought on an on-going basis.

Footnotes

1. Ontario Report of the Select Committee on Company Law (Singer) p. 133.

2. Singer indicates (p. 132) that there were 1,141 licensed independent adjusters in Ontario as of November 3, 1976.

3. Under The Insurance Act, R.S.O. 1970, c. 224, s. 1(4):
'adjuster' means a person who,

i. on behalf of an insurer or an insured,
directly or indirectly selects the right
to negotiate the settlement of or invest-
igate a loss or claim under a contract or a
fidelity, surety or guaranty bond issued by
an insurer, or investigates, adjusts or settles
any such loss of claim, or,

ii. holds himself out as an adjuster, investi-
gator, consultant or advisor with respect to
the settlement of such losses or claims.

The Act does not apply to barristers or solicitors (s. 1(4)iii).

4. As explained in more detail below, staff adjusters have only limited authority to bind the insurer. The limitation comes in the form of a dollar figure beyond which the employee is not authorized to settle without specific authority from his superiors.

5. Singer op. cit., p.134; D.H. Carruthers, Q.C., Report on Insurance Study submitted to the Superintendent of Insurance, Ontario Ministry of Consumer and Commercial Relations, 1973-75, volume 4, p.23; adjusters are not permitted to act as agents for a claimant in claims arising out of motor vehicle accidents; The Insurance Act, R.S.O. 1970, c.224, s.351.

6. In the case of a conflict of interest between the insured and his insurers, the relationship may become quite awkward. Were an adjuster, in the guise of representing the claimant's interest, to persuade the insured to make statements prejudicial to his claim, the insurer might well be estopped from subsequent reliance on the information so obtained: see the recent case of Wawanese Mutual Insurance Co. v. Buchanan (1976), 14 O.R. 2d 645 at 657 ff.

7. Singer, p.134 ; G. Taylor, "Yes, We Have No Business: A Survey of Independent Adjusters, The Canadian Independent Adjuster, Spring, 1977, p. 15.

8. Id. Taylor at 16.

9. Our information indicates that career patterns in Canada are possibly quite different from those in the U.S., rendering reliance on American data suspect. The very good work of H.L. Ross entitled, Settled Out Of Court (Chicago, Aldine, (1970) may have only limited Canadian application. Ross' statement that "a lifetime adjuster is a management mistake" (id. at 38) may be misleading if applied to Canada.

10. See Table 1 (appended) for summary.
11. Singer Report at 138.
12. It appears that in the United States adjusters receive in-depth training at central training centres run by the major companies.
13. Carruthers, Report on Insurance Study, op. cit., volume 4, p.22, (unpublished).
14. McWilliams, p.7.
15. Ss. 389 and 350(5).
16. Ss. 350(6) and 342(8)(9)(b).
17. Insurance Act, s. 389.
18. For a useful general summary of the work of the patent agent, see General Census, Occupational Information Monograph, Patent Agent, 1961 Canadian Census Classification, Catalogue No. 01-25, Published in 1967; the work of the patent agent in patent matters is described in R.F. Delbridge, Preparation and Prosecution of Canadian and Foreign Patent Applications (1969), 58 C.P.R. 251.
19. As a result of an historical anomaly of no particular interest here, only persons registered (see below) with the Patent Office before 1940 are entitled to call themselves patent attorneys; all others are called patent agents: see E.L. Medcalf, The Patent Profession in Canada (1962), 37 C.P.R. 130.
20. The Patent Act, R.S.C. 1970, C-4.
21. Section 16; Patent Rules, S.O.R. Cons./55, 2510, Rules 136-138, as amended.
22. Patent Rules, R. 140.
23. Rule 142; for sample examinations see, Patent Agent Examination (1962), 37 C.P.R. 114 and (1965) 43 C.P.R. 189.
24. Section 16, Rules 136-138.
25. Delbridge, supra n. 18.
26. Howard Goldblatt, Justice Delayed.... (Toronto: Labour Council of Metropolitan Toronto, 1977) 30-42.
27. Ibid.
28. United Steelworkers of America, Brief Submitted to the Ontario Industrial Inquiry Commission on Arbitration (May, 1977).
29. While there is some doubt about the propriety of Union X nominating one of its own employees to an arbitration panel, it is apparently quite commonly done on the consent of all parties.

TABLE 1
(see footnote #10)
REQUIREMENTS

RESULT

STEP

1. Initial Application to Superintendent of Insurance	a. proof of good character b. supervision	Letter of Authority
2. First Examination	a. one year of supervision b. examination by superintendent	Probationary License
3. Second Examination	a. a second year of supervision b. examination by Inquiry Panel	All-Lines Restricted License authorizing practice as an <u>employee only</u> .
4. Application for Proprietor's License	a. 5 years experience under license b. \$10,000 bank deposit c. an office outside the home d. Letters from three insurance companies undertaking to use services.	

XV Paraprofessionals: Summary and Conclusions

Footnotes

XV Paraprofessionals: Summary and Conclusions

The problem solving mechanisms of our legal system are central to the conduct of personal, corporate and public affairs. Much of this work is highly complex and could only be competently carried out by persons with sophisticated training. Some parts of this work are not so complex and could be, and in fact are, carried out by persons with very limited training.

It is legitimate for public policy to seek to ensure that legal services are competently rendered. The policy is justifiable in certain cases on the basis that the individual in the marketplace is too little informed to assess the competence of offerors of legal services. Policy-makers ought to intervene in such cases to ensure that only the duly competent have the lawful right to offer legal services to the public. Perhaps more compelling than the cases of individual injury caused by incompetently rendered services are those of social or third-party injury. The individual's knowing or unknowing choice of inadequate legal services creates risks that the whole fabric of the legal system will be marginally weakened. For example, to the extent that the quality of advocacy is an input into the quality of judicial decision-making, poor quality advocacy may dilute the quality of legal doctrines and precedents bearing widely on the affairs of third parties. Given the centrality of the legal system in our lives, such a cost ought not to be incurred lightly.

It is clear then that the market for legal services must remain in some large part a regulated market. It was argued at the outset (Chapter III: Justice & Economics) that the professional monopoly through occupational licensing ought to be limited to those

circumstances in which no equally effective but less costly policy response could be developed. The existing regulatory framework holds little, if any, hope of a sophisticated response to the regulatory questions. Accordingly, we make two recommendations:

- 1) that the regulation of the market for legal services be substantially loosened; and
- 2) that there be created a new regulatory authority to regulate certain aspects of this market.

The existing regulatory framework is a blunt one indeed. As we have set out (Chapter III.D: The Unauthorized Practice of Law) it forbids any person

... to act as a barrister or solicitor
or hold himself out, or represent himself
to be a barrister or solicitor or practise
as a barrister or solicitor.¹

This framework suffers from a series of defects which in our view make it completely inadequate to the sound regulation of the market:

- (i) It grants to lawyers a prima facie monopoly of legal services; in our view, this is an over-regulation of a market in which the massive evidence is that many law jobs are in fact performed by non-lawyers. We emphasize that we have no evidence that lawyers have abused this monopoly. Indeed, through their governing body they have plainly permitted and encouraged the growth of many forms of paralegal workers. The statutory mandate should recognize the desirability of such growth.
- (ii) It is too vague. It is our view that the regulatory scheme should indicate formally with more precision where the demarcation lines should be drawn among

various legal services occupational groups. It may, of course, not be possible or desirable to draft a statutory provision of great precision in this regard. It ought, however, to be possible to elucidate over time through regulations and rulings where and under what conditions the lines are to be drawn.

- (iii) The arbiter is inadequate. It cannot seriously be argued that the Courts have the time, expertise, resources or inclination to make major public policy decisions having market-wide implications, which is what the existing framework requires of them.
- (iv) The enforcement body is unsuitable. The initiative for enforcing the regulatory policy ought not to rest with the Law Society of Upper Canada. It does not have the resources or expertise to shape a sophisticated enforcement policy consistent with the loosening of the professional monopoly. Nor, it must be added, can appearances be well preserved by entrusting the enforcement of demarcation lines among occupational groups to one of those groups, albeit a senior and respected one. We emphasize that we are not here suggesting that the Law Society of Upper Canada ought to be relieved of its regulatory authority over lawyers. None of our research for this paper suggests that this work is done with other than scrupulous attention to the well-being of the public. Rather, we will suggest that the Law Society is not a suitable regulator of the whole of the legal services market.

A new regulatory framework ought to contain explicit provision for encouraging the loosening of the very stringent monopoly formally existing in this market. Our research does, it is submitted, show that quite massive amounts of legal services are being rendered by persons other than lawyers. These persons do not fall, at the present time, into clearly demarcated and accepted occupational groups. Some of these paraprofessionals work for lawyers and are called law clerks or legal secretaries. An employer-lawyer accepts ultimate legal responsibility for the work of his employees. The degree of actual supervision received will, as one might expect, depend on the inclination of the lawyer, the experience and ability of the paraprofessional and the complexity of the task. It is incontroverted that lawyers employ such personnel in order to lower their costs. As we have indicated (see Chapter X.C), the lawyer's incentive to make such cost saving innovations will depend on his ability to generate sufficient service volume to keep a paraprofessional fully occupied, which in turn will depend on his ability to bring these cost savings to the attention of the public through advertising or other means.

Some paralegals, such as title searchers or private claims investigators, work on their own account, offering their services only to lawyers. Others, such as community legal workers or patent agents, may offer their services on their own account directly to the public without the direct supervision of a lawyer. Still others, such as insurance claims adjusters or trade union officials, deal directly with the public but are employed by non-lawyer employers.

Each of the paralegal persons we studied performs 'law jobs'. By this we mean that his or her work, like that of the lawyer,

consists of the application of an understood legal rule or body of rules to the facts of individual cases. Moreover, insofar as one can judge, each of these paraprofessionals performs work to a standard of competence generally acceptable to employers and clients alike.

There are, of course, differences in the recruitment, training, supervision, regulation and tasks of the various personnel studied. The common thread is their performing of law jobs. Yet the job may be as simple (relatively speaking) as that of the trade union official helping a member fill out a Notice of Grievance or as complex as that of the insurance claims manager who settles an enormous claim for personal injuries. Government regulation may be non-existent as in the case of community legal workers or it may be very restrictive, as in the case of law clerks, all of whose work must be performed for lawyers.

All of this 'law job' activity by non-lawyers constitutes in our view a prima facie case for a formal loosening of the 'unauthorized practice' rules which formally limit the performance of 'law jobs' to lawyers. Such a loosening would pursue the following goals:

- (i) it would formally sanction what is already taking place;
- (ii) it would enhance the efficiency of the legal services market by enabling a better match of training to law jobs;
- (iii) by lowering the entry barriers to the legal services market, it would enhance the just distribution of law jobs by making them available to individuals unable to afford at the outset of their working lives the costs of acquiring full legal qualifications.

Yet it is apparent that to speak of 'loosening' the existing strict regulatory system answers few specific questions. Unlike studies of other occupational groups, we have not been examining one or two clearly identified occupational sub-groups. Nor are there authoritative representatives available for any of the interests involved except that of the lawyers. For this reason, we have been unable to approach our work as a straightforward question of whether or not one or two occupational groups, already working in fairly clearly defined territory, should be brought into the regulatory domain. Rather, we pose for the Committee's consideration a series of questions to which work subsequent to ours ought to be addressed as part of the policy of de-regulation we have proposed. Among more specific questions which would have to be answered in any contemplated deregulation are these:

- (i) which jobs?; clearly a very large bulk of lawyers' work must remain lawyers' work if it is to be competently performed; other law jobs can be and are now being competently performed by persons other than lawyers. It seems likely to us that under a sound regulatory scheme some considerable bulk of the day-to-day work in the legal services market could be performed by paraprofessional personnel practising on their own account and dealing either with lawyers or directly with the public. Conveyancing, straightforward work in estates and incorporation, and various kinds of advocacy work before administrative tribunals seem to us potentially well within the competence limits of non-lawyers working

under an appropriate regulatory regime; the Committee ought to seek representations from interested parties as to what the precise limits of these possibilities might be.

- (ii) which markets?; should a given type of para-professional be permitted to practise on his own account or only for an employer? if on his own account, should he be permitted to deal directly with the public or only with lawyers? should lawyers and paralegals be permitted to work together as co-principals in firms? if paralegals are to deal with the public, should they be permitted to deal only with the sophisticated public or with ordinary household clients?
- (iii) which regulation?; are there law jobs which could be performed without any regulatory scheme? would registration with a government agency be sufficient in some cases? the posting of a bond? contracting for liability insurance? a certification scheme under which the public is permitted to choose among those certified to be competent and those whom they may have reason to believe are competent but are not certified? a licensing scheme under which only those possessed of a government-sanctioned licence may lawfully offer their services?
- (iv) which training?; could there be law jobs which might be performed without any formal training? with a six-week community college course? a six-month private industry training program? two years of

an LL.B. degree? should more extensive use be made of bridging techniques which would encourage mobility up the law job ladder with the associated gains over time of income and prestige? Some question arose during the course of our research as to the overall adequacy of the existing general preparatory programs; there is the possibility that schemes of accreditation for preparatory programs may, over time, enhance the acceptance of paralegal training programs offered in community colleges or law schools.

- (v) which information?; it is apparent that the efficiencies contemplated can be passed on most effectively where they can be brought to the attention of the public; decisions will need to be taken as to the various forms in which this might be done and as to which forms are suitable in the case of a given occupational group; as a general matter it seems clear that were it to be decided that, for example, a group of paraprofessionals might be permitted to process change of name applications as well as lawyers, a way should be found to give as much information as possible to the potential client to aid him or her in making the choice of which service to purchase.

Who should regulate? The new regulatory authority we propose ought to possess the following characteristics:

- (i) It ought to be so constituted as to have the fact and appearance of independence of any of the regulated groups. Such an authority would have to decide the lines of demarcation among contending professional groups. It seems clear that this is not the sort of decision which falls properly within the purview of any given professional group, lawyers included. Indeed, it may be that the historic role of the legal profession as a buffer between the individual and the state would suggest that the authority ought to be insulated from the easy reach of the government of the day. We note here that self-government with respect to disciplinary matters seems capable of working quite well. It seems, however, that more general regulatory matters relating to demarcation, training, supervision and other considerations ought to be made by a more broadly constituted and independent body than any of the competing professional groups could supply. At the same time, the development of an organizational structure among a "group", such as "law clerks" in private offices, might receive some real impetus from limiting the use of the appellation "law clerk" to members of an association such as the Institute of Law Clerks. However, if this is to be done, it should be done in such a way so as to ensure that one self-governing monopoly would not simply be replaced by another. In particular, the scope of the

self-governing powers of such an association should probably be limited to matters disciplinary in nature and matters of a more general regulatory nature left to the new authority we have proposed.

- (ii) It ought to have expertise. The above questions are not essentially legal questions. Legal expertise will be required at some point. So will the expertise of the economist, the educator and the manpower expert be essential. The consumer interest is deserving of formal recognition. Any regulatory authority ought to reflect these various perspectives in its composition.
- (iii) It ought to have resources. The answers to the questions we have set out will require detailed fact gathering and evaluation. Indeed, the resources needed vastly exceed those we were able to bring to bear in our work. Of course, the Professional Organizations Committee may develop more evidence on some of the questions we have posed as its work progresses. In the main, however, it is clear that sound answers to these questions will require the sophisticated resources associated with a public regulatory body.
- (iv) It ought to have authority. The regulator ought to have the authority to promulgate regulations and interpretive rulings. Such activity might properly require in some cases the approval of the Attorney General. This authority ought to be broadly drawn to accord to the regulator the full range of registration, bonding, certification, licensing and other regulatory options

from which it can choose measures which appear appropriate. Equally, it ought to be authorized to seek compliance where required. If it is thought that the criminal sanction is inappropriate, it may be that the enforcement techniques of modern consumer legislation, such as the Ontario Business Practices² Act which provides for a public enforcement official (the Director) and a specialized and broadly-based administrative tribunal (the Commercial Registration Appeal Tribunal) with injunctive powers to police unfair business practices, would prove to be more suitable. We note in passing our view that pending the constituting of the regulatory authority that we propose, it does not seem fitting that the enforcement authority in respect of unauthorized practice should rest with the Law Society of Upper Canada without supervision by the Ministry of the Attorney General, perhaps through a requirement of leave to prosecute. The McRuer Royal Commission on Civil Rights recognized that it is inappropriate for self-governing bodies, such as the Law Society, to make important regulations without government approval or to have a monetary interest in the result of unauthorized³ practice prosecutions. The Committee on the Healing Arts similarly recommended that decisions to prosecute for unauthorized practice be removed from professional⁴ bodies and vested with the Crown Attorney's Office. In the light both of the difficulty and undesirability of closely defining by statute the exclusive scope of practice of

the legal profession, such decisions will, in many cases, be important decisions of public policy for which in our view the Attorney General ought to be publicly accountable.

Such an independent authority as we propose, vested with expertise, resources and authority, could over time answer some of the difficult questions our research has posed. It could effectively strive to loosen the regulation of the legal services market to the maximum extent consistent with a soundly developed view of the public interest.

Footnotes

1. The Law Society Act, R.S.O., 1970, c. 238, s. 50(1).
2. The Business Practices Act, S.O. 1974, c. 131.
3. Government of Ontario Royal Commission on the Inquiry into Civil Rights, Report No. 1, vol. 3 (Ontario: Queen's Printer, 1968), Chaps. 80 and 85.
4. Government of Ontario, Committee on the Healing Arts, Report, vol. 3 (Ontario: Queen's Printer, 1970), p. 42.

XVI Specialization

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XVI. Specialization

A. Introduction

The regulation of specialization is a possible response to the information problem that exists in the market for legal services. The information problem exists in the sense that consumers are unable¹ to distinguish the various qualities of service offered and select the appropriate service for their needs. A review of the nature and extent of the problem, as well as a discussion of the implications of specialization programs that exist in various jurisdictions,² will help to determine whether regulated specialization is an appropriate response.

The terms "specialization" and "specialist", which are central to the discussion, have been used without any standardization of meaning, and it is important to explain these terms at the outset. "Specialization" may refer to the limitation of a lawyer's practice to less than all fields of law,³ or to the achievement of expertise in a given area of law.⁴ Similarly, the term "specialist" may be used in reference to one who frequently performs similar tasks, or to one who possesses the training and/or experience to have developed a recognized level of expertise.⁵ Certification by some regulating body of the level of training and experience achieved in an area of law may add official recognition to the qualifications of a specialist.⁶

It is also important to explain that the debate about specialization in Ontario that started in 1972 was imported from the United States where controversy over the issue has been active since the early 1950's.⁷ The interest in specialization in the U.S. was generated within the legal profession itself, and centred around information and competence

issues. The early interest in being able to supply more information to the public about special expertise and the concern about the freedom of some lawyers to designate themselves as specialists may be explained by the growing supply of lawyers competing in the market and the lack of standardization in legal education. Those lawyers with superior training and experience desired certification of their qualifications and the ability to announce their qualifications to the public to help them compete more effectively.

The Canadian scene was somewhat different, even when interest in specialization was first expressed in 1972. Lawyers themselves were unconcerned about the possible competitive advantages of specialization because the demand for legal services was still considerably greater than the supply of lawyers. Furthermore, because the basic legal training was roughly equivalent across the province there was not the same need for lawyers to distinguish themselves on the basis of education or training.

However, at that time there was a growing interest in specialty designation from the public viewpoint. In fact, various press reports on the issue⁸ were seen as indicating a wide-spread public need for some regulation of specialization for the purpose of permitting advertising of special expertise. Whether or not there was a public demand for specialization, the issue⁹ was dropped and the plan proposed to deal with that issue¹⁰ was shelved. The revival of the specialization issue requires consideration from the perspective of the public and the legal profession.

B. The Need for Specialization

1. An Information-Based Rationale

Proposals in favour of specialization programs¹¹ emphasize the public's need for more information to assist in finding the right lawyer for the work involved. A concern for the accuracy of specialty information leads to a discussion of formal specialization as a means to meet that concern.

The information problem in the market for legal services exists in part because of the advertising restrictions which have been imposed by the Law Society of Upper Canada through their Professional Conduct Handbook¹² (the "Handbook"). In the proposed revisions¹³ to the Handbook, the Handbook adopts parts of the Code of Professional Conduct¹⁴ of the Canadian Bar Association which stress the need for supplying broader information to the public to assist in finding a lawyer qualified to provide the necessary service through informational as opposed to promotional advertising.¹⁵ The proposed addition to the rules¹⁶ suggests that the Law Society intends to keep control of the content of lawyers' announcements. Yet such control is now subject to the Combines Investigation Act¹⁷ which has been argued to mean that the need of the public for relevant information may override professional restrictions on advertising.¹⁸

The information problem exists not only because of the ban on advertising but also in part because clients may have limited ability to interpret and utilize information even if it were available. To the extent that this latter part of the problem will always exist, the information problem can never be solved entirely by merely making more information available. Nevertheless, it is important to assess the usefulness of specialization programs directed at solving information deficiencies.

Chapter IV¹⁹ of this working paper describes the source of client information about lawyers as mainly previous experience and word of mouth. On the basis of these sources of information, clients fall into three groups. Property and business clients²⁰ in large cities effectively use both sources of information. They form informal communications networks through professional and social contacts and thereby receive and supply information about the quality and cost of available lawyers and firms.²¹ Repeated need to use lawyers also gives this client sector sufficient previous experience to be able to recognize quality of service. The complexity of their problems is generally matched by the sophistication to know where to go to have them resolved. Because of the variety and complexity of their problems these clients tend to favour large firms that can supply all the specialized services they need at one location.

The second sector is individuals and persons operating small businesses who reside in small Ontario towns. Although previous experience is an unreliable source of information for this group, owing to infrequent use of lawyers by clients in this sector, informal communications networks are formed and can supply much necessary information about qualifications of a lawyer as well as about the quality and cost of service to be expected. The lawyer tends to be reasonably visible and accessible to potential clients.²² Because legal problems experienced tend to be relatively simple and limited in range, local clients have sufficient knowledge and sophistication to recognize the type of problem, to know the kind of service needed, and to find, through informal information channels, a lawyer to supply those services.²³

The third sector is urban individuals of moderate or low income for whom previous experience has limited value as a useful source of information because of infrequent need for legal assistance and changes in the nature of legal needs.

Table IV.2²⁴ of Chapter IV is reproduced here; it shows the sources of information for users of legal services.

Distribution of Users of Legal Services by Source of Information (frequency & percentage). N=72

<u>Sources</u>	<u>Frequency</u>	<u>Percentage</u>
Friends	38	52.8
Family	9	12.5
Business Associates	18	25.0
Legal Referral Service	2	1.1
Legal Aid	6	8.3
Other	<u>16</u>	22.2
	89	

This table illustrates clearly that informal²⁵ references by word of mouth are the chief source of information about lawyers. Furthermore, between 55% and 75% of respondents in all surveys referred to in the above analysis indicated that their choice of lawyer reflected the recommendations of friends, relatives or colleagues.²⁶

These findings agree with those of Jack Ladinsky in his description of the linkage between clients and lawyers and the dynamics of information networks.²⁷ He cited a U.S. study²⁸ of respondents who had consulted an attorney at least once, together with respondents who had never used lawyers. These respondents identified the route they took, or would take, to find a lawyer. The combined responses showed:

<u>Actual or claimed source</u>	<u>Percentage</u>
Relative, friend, or neighbour lawyer	21
Relative, friend or neighbour referral	52
Formal organization referral	17
Mass society information	10

In analyzing the evaluation and selection procedures used by clients, data from the client survey showed a lack of independent search by clients and a strong tendency to rely on recommendations from others. In Chapter IV, Yale concludes that "the costs of engaging in a search for a lawyer may be too high for the individual relative to the benefits received."²⁹

Although clients are forced to rely on third party recommendations, they show a desire for more information about lawyer expertise and personal attributes indicating dissatisfaction with the amount of information now available.³⁰ Although clients may continue to seek personal recommendations to supplement other information made available through relaxation³¹ of the advertising ban, the need for more information is recommended³² as a means to improve access and provide a broader range of criteria on which clients can base their selection.

It is important to emphasize that although all consumers may want more information, the problem is more acute for those people who are members of the sector of urban individuals of low and

middle income (hereinafter referred to as "Urban Individuals"). Having identified this group as having the most serious information problem, one must examine the nature of their information needs. The legal services required by this group are confined primarily to the following areas: real estate and estates, and to a lesser degree, family law, personal injury cases, simple business advice, driving and other minor criminal offences, and administrative law cases concerning landlord and tenant matters, workmen's compensation, welfare and immigration. Because the legal problems commonly encountered by this group are unlikely to be complex, a fairly basic level of competence in the area is all that is required to perform the necessary service. Therefore the information needed by this group should identify those lawyers with the minimum necessary level of competence in the relevant area.

It is possible to identify a fourth group of clients whose sources of information are as poor as those of Urban Individuals, but whose information needs may be different. Criminal law offenders form such a group, in that, although they may come from any of the other groups mentioned, it is unlikely that their usual sources of information about lawyer selection would be useful. Although information flows with respect to good criminal lawyers are excellent within the penal system, it may be too late to be of any value to first offenders. The difference between this group and the Urban Individuals is that the consequences of poor service to the members of the group are severe and cannot be adequately recompensed with damages. Accordingly, criminal law offenders need to know who is practising in the area of

criminal law and their capacity to provide the necessary service. Depending on the nature of the offence, it may be unsafe to assume that most lawyers in practice have the requisite competence. Furthermore, a distinctive set of skills may be required to practise criminal law; consequently, even lawyers who practise in the criminal law area may lack the skill to defend some charges competently.

From the foregoing, it can be seen that two different responses may be necessary to the information problems of the Urban Individuals and the criminal law offenders.

Formal specialization programs have been proposed as a solution for the information problem described above, but they have also been proposed as a means of ensuring the competence of lawyers and reducing the cost of legal services. From an information viewpoint there would be neither competence nor cost problems if consumers had sufficient information and the ability to use it. A competence problem exists when consumers are unable to distinguish variations in levels of quality of service, and choose, or pay for, a level of competence different from their needs. Similarly, resources are used inefficiently if consumers are unaware of quality variations and purchase a quality of service above or below their needs. In theory, given sufficient information, a consumer would be aware of variations in quality and price and only select a quality of service to match his needs at the appropriate price. Cost of service could then reflect directly the quality of the service, and all lawyers would face strong incentives to adopt the most efficient possible means of producing legal services.

2 Other Rationales for Specialization

Although this paper will discuss specialization in terms of its ability to satisfy the identified information needs, it must be recognized at the same time that some advocates of specialization support such programs on the basis of the need for limitation of practice as a means of achieving competence as a goal in itself apart from any consumer information needs. Their discussion has centred around the impossibility of staying competent in all fields,³³ and the existence of voluntary concentration which is now encouraged to some extent by ethical rules³⁴ which require a lawyer to remain competent in all fields of practice or to limit his practice to those areas in which he is competent. It is often this goal of achieving better quality of service that has sparked interest in specialization and resulted in programs which guarantee competence rather than simply supply more information.³⁵

C. Responses to the Information Problem

Possible responses to the information problem described above include a purely informational response which provides sufficient information about all lawyers to enable consumers to make a knowledgeable decision about the quality and price of lawyer that suits their needs. Such information, in theory, might include educational data, areas of practice, years of practice in each area, success rates where relevant, expected performance time and quality for typical services, and information to assist in interpreting the foregoing information. Apart from the difficulty and cost of generating such extensive information, there would remain among a significant group of clients an inability to digest and use this information effectively.

As an alternative to supplying information about the competence of all lawyers, a possible response to the information problem might be the setting of a standard below which no person would be licensed to serve the public. The public would thereby have a guarantee of the minimum competence of all lawyers at the time they were licensed. In fact, the admission requirements set by the Law Society of Upper Canada already prescribe such a standard. The guarantee is that at the time of admission and call to the bar all lawyers possess the degree of competence required to meet the prescribed standard.

It may, however, be necessary to establish higher standards than the general admission standard if it is discovered empirically that

the level of quality reflected in the admission standard is below the level of competence needed to solve the client's problems in specific areas of practice. Lawyers might also need to prove that they continue to possess the skills corresponding to the minimum admission standard if it is discovered that these skills deteriorate over time.

The mechanism of standard setting as a response to the information problem recognizes the impossibility of supplying information about the level of quality of all individual suppliers to all potential users, and that exclusive rights to practise in an area conferred on only those who have met the prescribed criteria provide a guarantee that the competence of all those who are practising in the area is above a given level. Although this approach indirectly provides information about those practising in an area, the emphasis is on guaranteeing competence.

An example of granting exclusive licence to practise in an area as a means of ensuring competence is England where there are two branches of the legal profession, barristers and solicitors. Barristers have exclusive rights of audience in the High Courts of England. Solicitors may be specialists in other areas of law but no effort has been made to confine individual solicitors to any one area of practice.

Whether or not the British system is desirable³⁶ in Ontario, lessons can be learned from an examination of the British system. Firstly, the development of barristers as specialists is supported by the ethical

rules which give security to the referral system. Solicitors feel free to seek advice of barristers who are specialists in a given area without fear of losing the client because barristers do not deal directly with clients in any matter at any time except in certain limited criminal defenses.³⁷ Secondly, one cannot fail to observe how the exclusive right given to barristers to appear in the High Courts has led to the development of a highly qualified bar.

In the discussion of client information needs, criminal law clients were singled out as an example of a client group with special needs for highly accurate information owing to the severity of the consequences of engaging incompetent counsel. Furthermore, there is some indication³⁸ that incompetent counsel are practising in Ontario, affecting not only their own clients but the effectiveness of the whole judicial process.

Granting exclusive rights to practise criminal law to those lawyers who have met additional requirements beyond the general admission standard may be the appropriate response to the problem. However, because the standard setting response limits entry to the practice of criminal law, such a move could seriously affect the client's right to choose counsel and, in the short run, the ability to find qualified counsel.³⁹ Thus, before establishing new standards accompanied by exclusive rights to practise when admission standards are already in place, care must be taken to examine the adequacy of the existing standards, the degree

of incompetence resulting from the inadequacy of these standards, the potential for new standards to solve the problems, and the consequences of setting further standards.

A third possible response to the information problem beyond a purely informational response or a standard-setting response, described above, is the development of specialization programs which are designed to provide information about participants based on the standards set for participation in the program. This competence response recognizes that although, practically speaking, information cannot be provided about the competence of all individuals, the title or certificate given to those lawyers who meet the established standard provides the public with information that the members of this identified group have a specified level of competence while not excluding other suppliers from the field. The greater the number of levels of competence set for any area of practice, the more precisely consumers can identify levels of competence of individual lawyers who meet the standards.

The key to the effectiveness of this response is the accuracy of the information that is generated by the program about participants and non-participants. The problem with such programs is that consumers are led to believe that, regardless of the requirements of the programs, participants are superior to non-participants. For example, if a person is labelled a real estate specialist because of his participation in a program, there may be an implication that a non-specialist is less capable of handling even a simple residential real estate conveyance.

U.S. jurisdictions⁴⁰ have responded to the information problem with formal specialization programs which stress in varying degrees the need to

guarantee the competence of participants. In his analysis of the programs Richard H. Zehnle discusses the various approaches to the regulation of specialization:

"One approach (the California plan) stresses the responsibility of the bar to insure that attorneys publicly designated as specialists in certain fields are indeed competent in those fields. It insists on *standards* set high enough that only the truly competent will be recognized as specialists in the first place and that continued designation as specialist will be awarded only to those who make a real effort to keep abreast of developments in their fields. Proponents of a second approach (the New Mexico plan) question the possibility of some kind of abstract evaluation of competence, preferring to encourage the conditions from which greater competence in a specialty will most normally flow, namely, the limitation of practice by attorneys to one field or to a few limited fields. Judgment of competence in this approach, lies where it always has and perhaps ultimately always will - with the public itself.

The first approach emphasizes the regulation of specialization; the second, its encouragement on a large scale. Other approaches attempt to combine these two." 41

Zehnle also described the common characteristics of the various state plans:

"All of the plans are voluntary and spell out two important limitations: (1) no attorney is prohibited from practising in any field by the fact that he is not a specialist in that field; (2) specialization in one field does not deprive an attorney of his right to practise in other fields in which he may not be specialized. Further, all plans make provision for revocation by the board of the recognition of specialization, with the right of appeal for the attorney; the precise mechanics of revocation and appeal vary. Finally, the professional and ethical problems involved in widespread referral of clients by general practitioners to specialists are confronted. Solutions proposed are mainly that a specialist may render to a client no wider service than that for which he was recommended unless (1) he receives approval from the attorney who first recommended the client, or (2) he notifies the referring attorney by mail." 42

The chart in Appendix D provides a comparison of the main features of the California, New Mexico and Florida plans. These plans are considered basic models for other U.S. plans.

These plans lack the standardization that could be important in the development of specialization across a country, but as pilot projects they are suitable testing grounds for the various purposes behind specialization. The California program will be useful in testing whether or not standards of advanced competence can be established and serve a useful public purpose, and whether or not such a program can promote competence. The New Mexico program will be useful in testing whether the general public needs more than identification of areas of practice undertaken and whether or not such a minimum program is misleading. The Florida program is interesting as an attempt to combine improved access to legal services while using continuing education in an effort to encourage competence. Roderick N. Petrey, Chairman, Standing Committee on Specialization, American Bar Association, recently made a preliminary assessment of the programs:

The Committee has found that the regulation programs in these four states have had difficulty trying to pursue the goals of increased access to legal services and improved quality of service concurrently. California and Texas emphasized the quality objective in their limited certification experiments, and did not pay much attention to methods for increasing access. New Mexico and Florida emphasized the access objective, and explicitly rejected attempts to assure quality (although Florida requires self-designated specialists to continue their education).

The experiments in California and Texas established that it was possible to prepare and apply law practice category definitions and standards to identify specialists, although vigorous debate continues about the exact content of the definitions and standards and about the methodologies (such as examinations) used to apply the definitions and standards to the work of lawyers. Before these experiments, lawyers doubted that definitions and standards could be written for any field of law practice.

The costs of administering these four regulation programs have been reasonable, but the Committee found little evidence to justify any conclusions whatsoever about the possible cost implications of widespread specialization regulation. Additional experimentation and research is needed.

Based on its findings, the Committee drew some preliminary conclusions which encourage the American Bar Association and the state and local bar associations to take rapid and positive steps to establish valid definitions and standards for the various specialties of law practice through state-regulated specialization programs.⁴³

In terms of whether or not the U.S. programs are adequate responses to the information problem, it is important to consider the quantity and quality of information generated about the participants and non-participants of each program. Although information generated by the California program may accurately identify experts, because there is limited participation the program does little to help the information problems discussed earlier. Because of the limited participation it is unlikely that there is any detrimental implication about the ability of non-participants to offer basic services. On the other hand, the New Mexico program with an experience requirement⁴⁴ has a much higher involvement of lawyers. The program implies that, owing to this experience, participants are more likely to be competent than non-participants although some effort is made to counteract the possible inference by the public that participants are experts.⁴⁵ The Florida program is similar to that of New Mexico although there is an additional continuing education requirement. Because the participation in both programs is high they go further to supply the necessary information about lawyers. However, because neither the experience requirement nor the continuing

education requirement is an adequate gauge of competence, the accuracy of the information generated about the competence of participants is questionable. Also, the public may judge lawyers with less than three⁴⁶ or five⁴⁷ years experience, who are thereby ineligible to participate in the formal program, as incompetent to handle even minor matters.

In summary, the difficulty with most specialization programs is generating the needed information which accurately identifies the level of competence of participants without making any false implications about the level of competence of non-participants. A further difficulty with suggesting a specialization program that only identifies highly specialized expertise is that this may be irrelevant to the majority of consumers with legal needs, and is therefore an inappropriate response to their information problems.

In Ontario, recognition of the information problems led to two different competence responses.⁴⁸ In 1972, a specialization program⁴⁹ based on the California model was proposed and shelved. Again in 1977, a model similar to the Florida plan was suggested. In summary, the 1977 scheme as approved by Convocation in principle and circulated to the profession for comment, was the following:

1. applicants for accreditation would file a statement showing that at least fifty per cent of their time over a three or five year period had been spent in a particular area of law. The Law Society does not propose at this time to examine or investigate these qualifications;
2. maintenance of accreditation would require attendance at a refresher course at least once in each successive two-year period following accreditation. Initially shorter courses of one or two days' duration would be offered every six months;

3. no examinations would be required initially; however, the possibility of examinations was suggested as the plan matures;
4. the Committee looked to the profession for help in establishing the categories of accreditation;
5. the Committee recommended wide publication of the purpose of the plan to allow lawyers to inform the public of areas of practice where they have at least minimum competence and experience and to improve standards of practice emphasizing that the Law Society was not accrediting experts;
6. each category of accreditation should be under the supervision of a committee of knowledgeable practitioners who would be responsible to the Legal Education Committee for exercising general surveillance over the qualifications of the accredited group and aiding in the content and delivery of the refresher courses;
7. the costs of the accreditation program would be covered in fees for prescribed courses;
8. continuing education courses could be enlarged to provide more intensive instruction than provided in the refresher courses; and
9. the Committee did not fully explore the need for changes in the governing legislation.

The 1977 proposal which attempted to inform the public of areas of practice where lawyers have at least minimum competence and experience while attempting to improve standards of practice had several flaws:

1. Given that the bar admission course was designed to guarantee minimum competence in most areas of practice, an accreditation program which expects to reflect a higher level of competence must establish standards which require performance at that level. Otherwise, lawyers, ineligible on the basis of lack of experience because they are recently called to the bar, will be put at an unnecessary disadvantage when there is no evidence that they are

any less competent than those who qualify merely by length of experience.

2. The requirement of spending fifty per cent of one's time in an area to qualify may be unnecessarily high, resulting in disqualifying from accreditation competent lawyers whose practice is not so concentrated.

3. Standards of practice will not be improved solely by attendance at refresher courses once every two years unless specific competence problems are identified and the courses are directed at those problems. For example, high incidence of missed limitation periods could be reduced by courses which re-educate lawyers on all limitations and instruct on improved office systems.

A third response is now being recommended by the Special Committee on Competence (the "Committee") and has been adopted in principle by Convocation on June 16, 1978. The Committee recommended that lawyers who wish to do so be permitted to publicize the areas of law in which they practise provided they first register with the Society and obtain its approval and agree to engage in courses of professional development to be prescribed from time to time and for which a fee will be charged. The various areas of law are to be designated and Committees established in respect of each of them to set standards, arrange seminars and lectures and to prepare material to be mailed to those registered in

each section to keep them abreast of developments in the law.

Although this response may be categorized as an information response, the intent of the "Committee" is to stimulate a larger participation by the Bar in continuing education through the advertising incentive. Filling the information gap is not the stated aim. A copy of the report appears in Appendix F to this chapter.

In considering specialization programs as a response to a defined information problem, several basic issues must be addressed. Because the appropriateness of standards is the key to the effectiveness of any program, care must be taken that the body that undertakes to establish the standards of certification or designation does so in response to public needs.

In arriving at appropriate standards, it is important to consider the value of special education, experience and proficiency. If special education is required for specialization, it is important to consider the timing of such education. Certainly, further education after some period of experience would be most beneficial. However, it may also be disruptive to the lives of the applicants. The length of experience and the nature of the experience must receive careful consideration to ensure that they are necessary requirements to fulfill the purpose of the program and are not merely designed to inhibit entry into the field. Proficiency may be tested through written examinations or by peer review. The difficulties in the way of designing written

examinations to test the skills of a specialist must be recognized along with the difficulty of peers judging one another 'impartially.'

The issue of establishing standards so that the public is not misinformed by the specialty certification leads to a consideration of the advisability of exempting practitioners of long experience from some or all the entrance requirements other than experience. Such grandfather certification could be misleading if the individuals so certified were unable to meet the requirements.

It is the need for public information as identified earlier which should determine the areas of practice covered by the programs and the extent to which both certified and uncertified lawyers should be permitted to practise in an area.

The danger of the program supplying misinformation to the public about both participants and non-participants should be avoided to the extent possible through the use of further information and disclaimers to explain the content of the program and the terms used by it.

D. Objections to Specialization

Objections to the regulation of specialization have centred around traditional views held by lawyers of their profession and the fear of the economic consequences that may follow from such regulation.

1. Traditional Views of the Legal Profession

Specialization proposals may appear to threaten the view of the lawyer as an omniscient advisor who is dedicated to public service and above competition.

The omniscient lawyer may have existed before the proliferation of legislation and case law made it impossible to be proficient in all areas of the law. Because a licence to practise carries no restrictions on areas of practice, those lawyers who enjoy the challenge of entering a new area and successfully completing the task required, or those who take on work in unfamiliar areas in order to keep a client, are free to do so. However, the client may suffer as a result of this freedom in several ways. Service may be delayed while the lawyer educates himself in the area. If the client's bill includes the education time, it may be excessive. If the lawyer proceeds without adequate preparation the client may not be getting the required quality of service.

Ethical rules which support the fundamental belief that call to the bar creates all lawyers equal ignores the reality that some lawyers are superior to others in given fields of law. To the extent

that the public sees most lawyers as equal, specialization programs may alter that view. Although the assumption of equality should not prevent an improvement in information flows to the public about specialties, care must be taken in any proposed specialization program to ensure that the program labels as superior only those lawyers who are more competent. For example, a properly administered certification program based on appropriate standards can identify superior lawyers. However, valid objection can be made to any other program which grants titles based on inappropriate criteria for which there is no proven relationship to superiority.

To resist the recognition of specialists in the belief that the legal profession should be insulated from competition ignores the fact that lawyers have always actively competed for clients, despite formal restrictions, through associations, memberships in groups, and any other means which make them more visible in their communities. The only change that would result from recognition of specialties would be to base the competition on legal ability as identified by the program. On the other hand, care must clearly be taken to avoid the kind of programs mentioned above, which identify lawyers as superior on the basis of criteria which are unrelated to their superiority in law, thus giving them an undeserved competitive edge.

Resistance to the recognition of specialization has also focused on threats to the existence of general practice, the traditional mode of practice. Although the model specialization programs do not exclude generalists from the areas in which specialists practise, if programs

are implemented which permit specialists exclusive rights to practise in a given area, then general practice, to the extent that it means one person offering service in all areas, will be impossible. Even if no such exclusive rights are granted, general practitioners may suffer if the information that specialists are practising in an area leads the public to choose a specialist over a generalist, even though the problem may not require additional expertise beyond that which a generalist can offer. General practitioners also fear loss of clients through referrals to specialists, who, if they operate in groups, can supply all the services an individual might need. Accordingly, they may hesitate to use specialists if a valuable client may be lost.

The extinction of general practice is not a necessary consequence of specialty recognition. Clients will weigh the value of a lawyer as a confidential advisor on all affairs against the ability of a single lawyer to supply all the necessary services. The average individual, whose affairs are relatively uncomplicated and are likely to fall into a few common areas, can retain his one-to-one relationship with a general lawyer. If occasionally the average person needs a specialist he may act through the general lawyer to obtain such advice. A sophisticated client who requires specialized service beyond the capabilities of an individual lawyer must be content to deal with a series of specialists. The trade-off is forced by the complexity of the work involved. As long as the standards of a specialization program clearly point to superiority, the public should be free to purchase the Cadillac service, and Volkswagen dealers should not be permitted to prevent that choice in order to protect their own interests.

The future of general practitioners may well depend on the locality in which he or she is practising and the needs of the clients in that locality. General practitioners will likely continue to be dominant in smaller places and in specific locations in larger cities easily accessible to individuals. However, general practitioners who hope to practise among specialists who cater primarily to sophisticated business clients may well be unable to compete. In any event, protection of the generalist should not be a primary reason for opposing specialization if it is seen to be otherwise valuable.

Because there are at present no ethical or other rules which inhibit the specialist from "stealing" the referred client, fear of loss of practice on referrals is a legitimate concern for general practitioners. On the other hand, rules to reduce these fears of the referring lawyer must be balanced against restricting the client's freedom to select a lawyer of his choice.

It has been recommended⁵⁰ that referring lawyers be protected by requiring the receiving specialist not to enlarge the scope of representation of the client unless the referring lawyer has consented or been notified in writing. Clearly, even under this rule, the referring lawyer runs the risk of losing the client. Accordingly, ethical rules protecting the referring lawyer must be coupled with the positive duty to refer clients, so that the risk⁵¹ of not referring clients on unfamiliar or complex matters is greater than the fear of losing the client. For example, the duty to refer clients might

require a lawyer to recognize his lack of competence for a particular task and decline to act or obtain his client's instructions to retain, consult, or collaborate with a lawyer who is competent in that field.⁵²

2 Economic Impact of Specialization on the Market for Legal Services⁵³

The existence of de facto specialization, regulated or unregulated, indicates the existence of market segmentation. The degree of market segmentation may depend on the extent to which specialists have exclusive rights of practice in an area of law. Permitting non-specialists to practise in an area also served by specialists may prevent a total segmentation of the market. However, the existence of a certification program may result in de facto licensure. As Marvin W. Mindes states:

"One consequence of the regulation of legal specialization will be that other practitioners are barred from handling work coming within a regulated specialty. Proponents of regulation attempt to deal with this issue by proposing certification that would allow other lawyers to continue practising in the specialized domain without being allowed to indicate the specialty to the public. There is substantial evidence, however, that this is a distinction that will not long describe reality. De jure certification will turn into de facto licensure."⁵⁴

Segmentation may be reinforced if the public base their selection of a lawyer on the credentials established by a specialization program and avoid using those lawyers who do not have those credentials, and if demand-side institutions begin to demand that specific services be supplied by certified specialists; for example, if all court documents must be prepared and signed by litigation specialists.

The formation of subgroups that do restrict entry may have various effects on the entrance requirements. The group may establish high standards in an effort to achieve a desired level of competence of members, or may raise the standards in an effort to remain exclusive, and thereby create unnecessarily restrictive entry barriers which keep otherwise qualified participants out of the group. Young lawyers are the most likely victims of these entrance requirements, which often include a given number of years of experience. Care must be taken to ensure that the standards that are set relate directly to competence and are not merely designed by the group to limit competition in the provision of legal services.

Higher priced legal services may result from a lawyer's efforts to pass on to the client in the form of higher hourly rates the personal costs of the lawyer in obtaining the specialist certificate. Members of the group may also be able to raise fees if strict entrance requirements create a monopoly for the services of that group. Finally, specialists in the group may tend to complicate and over-extend tasks in an effort to justify additional fees. They may also be in a powerful position to resist reforms and innovations in practice and procedure that may be beneficial to the public, but disruptive to their self-interest.

The quantity of legal services provided may be affected in two ways, both of which may reduce access to legal services. The barriers

to entry to the specialty group may reduce the number of lawyers available to supply services,⁵⁵ and possible increases in the price of service, discussed above, could place the cost of legal services out of the reach of lower and middle-income people.

The quality of service provided by lawyers may increase because incompetent lawyers are weeded out by the entry barriers; however, the quality of legal services received by the total population may be lowered if a significant percentage of the population are unserved or served poorly by substitutes.

Lastly, it has been suggested⁵⁶ that unregulated advertising in connection with specialization would tend to increase the cost of legal services and in the course of time would tend to bring about a concentration of legal services in large firms that could afford to advertise freely to the detriment of the medium size and small firm, thereby unduly limiting the choice of persons seeking independent legal representation.⁵⁷ Any regulation of specialization must take into account the optimal balance between increased information and risk of undue market concentration.⁵⁸

3. Legal Consequences of Specialization

Specialization may affect lawyers' liability by altering the standard of care expected of a lawyer to ensure that he or she has not been negligent. In his address to the 1977 March Lecture Series of the Law Society, Ian W. Outerbridge, Q.C., commented that the community standard in negligence cases is "still alive and well."⁵⁹ That is, a lawyer is judged by the standard of practice in the location he practises.⁶⁰ In the absence of Canadian authority, the effect of identifying areas of practice, identifying experts and creating a clear duty to refer can only be predicted on the basis of United States jurisprudence. The California Supreme Court case, Smith v. Lucas,⁶¹ "expands the standard of care to include knowledge of those principles of law which a well-informed attorney should have known through the use of standard research techniques."⁶² This case clearly puts the onus on the lawyer to keep up to date, but it also implies that an attorney who holds himself out to be a specialist, or who in fact specializes, should be held to a higher standard of care than a general practitioner.

The effect of creating a duty to consult a specialist as an ethical rule is uncertain outside the medical field where failure to do so has been held to constitute negligence.⁶³ The Canadian Bar Association in promulgating its new Code, has sought to avoid the issue. After the commentary which calls a lawyer dishonest if he undertakes a matter he is not competent to handle the following statement is made:

"This is an ethical consideration and is to be distinguished from the standard of care which a court would invoke for purposes of determining negligence." ⁶⁴

Because of the uncertainty connected with the possible judicial treatment of the issue of the standard of care as it relates to specialization, it may be necessary to legislate the duty to consult a specialist and a higher standard of care for specialists. A clear duty to consult on unfamiliar or complex matters, together with liability for failure to do so, would help to overcome the natural fear the generalist may have of losing clients by referring. Expecting a higher standard of care⁶⁵ of persons who identify areas of practice to the public might help compensate for any other quality checks which are lacking in a "specialization" regime.

4. Other Problems with Specialization Programs

The Report of the Law Society of Alberta on Specialization argues:

"There are even those who deny that specialization is possible. This group sees the law as a "seamless web" which cannot be divided into specialties. The client's problem can never be put into a single compartment because it contains some elements at least from many different fields of law. This argument, however, ignores the indisputable fact that specialization now exists almost universally throughout the profession." ⁶⁶

While the law may not fall into mutually exclusive categories it is certainly possible to master areas of law independently. Unfortunately, as stated, clients' problems are never so neat. Even if, the problem lies predominantly in one area of law, facets of the problem often impinge on other areas. The obvious danger of excessive specialization is that a lawyer specializing in one area will not even

recognize problems that fall outside that field.

Specialization can narrow a lawyer's outlook no matter whether specialization is regulated or not. Accordingly, this is not a valid reason for opposing regulation. What is important to consider is that efforts be made to reduce the development of tunnel vision by encouraging lawyers to receive as broad an education and experience base as possible before concentrating on a specialty. Thereafter, continuing education in areas outside the specialty would help to maintain some peripheral vision.

Another reason cited for keeping one's "general capabilities trim"⁶⁷ is that if an area in which a lawyer has specialized, such as motor vehicle claims, suddenly disappears through legislation, such as no fault insurance, the lawyer may then fall back on his or her general capabilities to begin to rebuild an area of practice.

E. The Existence of Specialization (Concentration of Practice)
in the Legal Profession

The data from the survey of legal firms conducted by the Professional Organizations Committee shows the existence of de facto specialization among Ontario law firms and lawyers.⁶⁸ The fact that firms and individuals are specializing is the kind of information that consumers do find useful in selecting their lawyers. Concentration in an area of practice by a firm might produce more competence and more efficiency and consumers may well benefit from knowing the primary fields of firms they are considering.

The data shows that firms in Ontario spend forty to fifty-five per cent of their billable time in one area of law with Toronto firms appearing more specialized than other firms in Ontario and sole proprietorships more specialized than larger firms.⁶⁹ Also the figures showing concentration in four activities indicate higher concentration in Toronto than outside and in small firms than in large firms.⁷⁰ From the data on the number of firms spending thirty, forty and fifty per cent of their time in an area of practice, it can be seen that real estate is the focus of activity in both Toronto and non-Toronto firms with as high as 66% of sole practitioners indicating they spend over 30% of their billable time in real estate. The top three activities in Toronto are real estate, civil litigation and corporate and commercial,⁷¹ whereas in other locations wills and estates is a more important activity than corporate and commercial.⁷²

Table VII.7 ⁷⁶

Percentage of Lawyers spending more than 50% of their billable time in an activity, by location and size of firm.

	<u>TORONTO</u>				<u>OTHER</u>			
	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>	<u>1</u>	<u>2-4</u>	<u>5-9</u>	<u>10+</u>
Civil Litigation	10	16	28	22	7	16	21	16
Criminal Litigation	13	8	6	3	7	8	6	2
Corporate and Commercial	14	15	26	40	5	8	16	20
Real Estate Transactions	32	29	24	15	43	35	21	17
Tax	1	1	2	5	2	1	2	2
Wills and Administration of Estates	4	4	6	4	6	6	5	5
Family	6	7	2	1	4	6	4	2
Administrative	1	1	2	4	1	1	1	2
Labour Relations	0	1	0	2	0	1	1	2
Industrial and Intellectual Property	1	0	0	1	0	1	2	12
Admiralty	0	0	0	1	0	1	0	0

N=476 N=693 N=238 N=561 N=537 N=1185 N=370 N=132

The data show that 84% of all lawyers in all firms who responded specialize to the extent of spending more than 50% of their time in one area. Thus, fewer than 20% of all lawyers might be excluded from specialization programs on the basis of this level of concentration.

It should be noted that the specialties practised vary with the size of firm in which the lawyer practises:

"Sole practitioners and firms with 2-4 lawyers are most frequently specialized in real estate. Significant numbers of lawyers in these firm size categories are also specialized in litigation, corporate and commercial law and to a lesser extent family and estates. In larger firms, lawyers are primarily specialized in civil litigation, corporate and commercial law and real estate." 77

Table VII.7⁷⁸ shows specialization in Toronto and other locations. It can be seen that corporate and commercial specialization is clearly centred in Toronto, while a larger number of lawyers in the sample (746, as compared with 494) specialize in real estate in other locations.

Table VII.9⁷⁹ which shows the percentage of lawyers spending more than 50% of their billable time in an activity by firm size and size of town, emphasizes the importance of real estate and to a lesser degree civil litigation in smaller towns. If a specialization program prescribed a minimum time requirement of 50% of billable time in an area to qualify for the program, clearly the majority of lawyers would be forced to seek specialty recognition in real estate.

Because there is some indication that criminal law as an area of practice may generate unique information needs and require a different response than other areas it is important to take a special

look at the data on this area. Taking figures from Tables VII.6, VII.7 and VII.9, we see the following with respect to the number of lawyers in the sample spending more than 50% of their billable time in criminal law:

Number of Lawyers spending more than 50% of their billable time in criminal law by firm size and location.

<u>Firm Size</u>	<u>Total</u>	<u>No. of Lawyers</u>	
		<u>Toronto</u>	<u>Other</u>
1	151	83	68
2-4	147	58	89
5-9	35	14	21
10+	17	15	2

Number of Lawyers spending more than 50% of their billable time in criminal law by town size.

<u>Town Size</u>	<u>No. of Lawyers</u>
<30,000	32
30,001-100,000	47
100,001-500,000	71
500,000+	156

It should be noted that approximately 82% of all criminal law specialists (as defined by those who spend more than 50% of their time in criminal law) practise in one and two-to-four-man firms. The importance of this fact is that if preparation for specialization in criminal law were to require a period of articling time or apprenticeship time after call to the bar it is unlikely that these smaller firms could absorb significant numbers of lawyers hoping to specialize in criminal law. This distribution of practice may well form an effective barrier to entry to the criminal law field. Furthermore, because over 50% of present criminal law specialists practise in Toronto, the problem would be more acute in other areas.

The fact that most criminal law specialists operate in small firms,

also makes it more difficult for clients to locate them. This fact supports a need for more information in this area of law.

One important issue in specialization is the extent to which lawyers refer complex or unfamiliar matters to experts. It can be seen from Table VII.10⁸⁰ that referrals are low in areas of real estate, estates and corporate commercial and high in civil and criminal litigation and taxation. Also referrals out are generally lower the larger the firm. These data emphasize that lawyers are recognizing limitations on their ability and are conscious of a duty to refer unfamiliar matters to lawyers outside the firm. This practice of referring emphasizes the need among lawyers as well to have good information to help them make appropriate referrals.

Hourly Rates of Specialists

The firm survey data in Chapter VI of this working paper show the following average hourly rates by lawyers' experience in Ontario, 1977, (see Table VI.27).

For lawyers with:	Average hourly rate
more than 10 years experience	\$66
6 to 10 years	59
less than 6 years	46

The table of law firms' average hourly rates, by lawyers' experience, by category of legal service, Ontario, 1977, shows some premium attached to specialization:

Table VI.28

Law firms' average hourly rates, by lawyers' experience, by category of legal service, Ontario, 1977.

Category	<u>Lawyers' years of experience</u>					
	<u>More than 10</u>		<u>6-10</u>		<u>Less than 6</u>	
	<u>N</u>	<u>Rate</u>	<u>N</u>	<u>Rate</u>	<u>N</u>	<u>Rate</u>
Civil litigation	131	\$76	71	\$66	134	\$50
Criminal litigation	54	74	52	58	84	47
Corporate, commercial	146	76	75	63	87	50
Real estate	215	61	134	56	192	47
Tax	13	92	11	72	10	59
Wills, estates	66	62	17	52	18	57
Family	35	71	23	63	51	48
Administrative	17	82	6	61	7	48
Labour relations	15	79	10	67	4	54
Industrial property	6	86	7	77	5	50
Admiralty	2	a	2	a	2	a
Other	9	71	16	59	-	-

a - number of respondents too small to publish data.

Source: Law Firm Survey, Q.V.3

Comparing the average hourly rates for all lawyers to the average hourly rates for lawyers in specialties, shows that there is a greater premium for specialization for those lawyers with more than ten years experience. The difference in hourly rates for lawyers with more than ten years experience between real estate at \$61 per hour and taxation at \$92 per hour may be explained by the degree of competition in the former market and the amount of knowledge and expertise necessary to practise in the latter market.

F. Summary

The information problem that exists in the legal services market is confined primarily to two distinct groups. The first group consists of urban lower and middle income individuals, and small business owners (the "Urban Group") who do not have reliable sources of information about where to find a lawyer to service their legal needs. The second group is composed of clients, such as criminal law clients, who also lack adequate sources of information about where to find a lawyer but for whom the consequences of engaging an incompetent lawyer may be severe. For each group a different response to their information problem may be indicated.

Looking first at the Urban Group we see that although they lack necessary information to locate a lawyer, their problems tend to be relatively uncomplicated and confined mainly to specific areas of law.⁸¹ For the most part lawyers operating a general practice should be capable of handling their problems. However, to the extent that individual lawyers now limit their practice, for instance do not regularly take litigation cases, then this group requires enough information to direct them to a lawyer who is performing in the given field. As such, a purely informational response appears to be all that is called for to assist this group. Therefore, information as to field of law practised can be disseminated through lawyer directories, lawyer referral services

and individual lawyer advertising.⁸² Because it appears that generally those who practise in an area are competent to handle the common legal problems of the Urban Group, any specialization program which is designed to verify some higher degree of competence is redundant and can, in fact, be misleading if the criteria established to ensure competence, such as length of experience and participation in continuing education, in fact bear no direct relation to the level of competence required to perform the necessary legal services. Furthermore, possibly detrimental economic effects such as increased price of services and reduced access would also have been created unnecessarily.

Nevertheless, it is possible that information as to the number of years of experience of a lawyer, as well as participation in professional development, would be valuable to consumers when combined with information as to fees to assist them in determining if the fee charged and the service rendered fairly correlate. Such information could all be provided through the individual advertising modes mentioned above.

The criminal law client group presents a different problem. Although first offenders generally suffer from the same information problem as the Urban Group, the consequences of incompetent representation on some criminal charges can be so severe that this client group needs the assurance that the counsel they select are competent to handle the case. As with all lawyers, it is impractical⁸³ to attempt to supply enough information about

individual criminal law lawyers to enable prospective clients to recognize various levels of competence. Furthermore, not only is it unsafe to assume, as we were prepared to assume with respect to the other legal problems of the Urban Group, that the average lawyer can handle the criminal case, but also it may be unsafe to assume that even lawyers who sometimes practise in the criminal law field possess that distinctive set of skills necessary to give competent service in every case. Accordingly, a competence oriented response to the information problem of criminal law clients might seem indicated.

However, because admission standards are presently in place which establish, at least at the time of admission, that all lawyers have a base level of competence in criminal law, further research is necessary to determine if there is a significant incompetence problem among lawyers practising criminal law. The research necessary to establish the degree of incompetence among criminal law lawyers might include polling the trial and appeal court judges who can supply knowledgeable peer assessment. Ideally, a survey of first offenders might be conducted to determine whether or not they had problems locating a lawyer and their satisfaction with the service rendered. It might also be useful to try to correlate the incidence of convictions and length of sentences for clients served by lawyers with varying backgrounds.

It must be emphasized that should such scrutiny reveal a significant competence problem among criminal law lawyers, it must not be assumed

without more evidence that the incompetence problem is any more acute in this area than in any other area of practice. However, because of the severity of the consequences of incompetent service in the criminal law field, the existence of a competence problem may indicate the need to identify a new competence level and either to grant exclusive rights to practise criminal law based on this standard, or, more tenably, to certify criminal law specialists according to this standard and to inform the public of the meaning of such certification.

The importance of clearly establishing the need for a new standard, with or without exclusive rights to practise, lies in the possible economic effects of segmenting the market for legal services by such a program. Licensure of criminal lawyers may lead to better quality service for those represented; however, increases in the price of service and the possible reduction in access to this quality of service may offset the intended advantages.⁸⁴ Although certification may not produce the same result initially, over time certification may lead to de facto licensure. The benefit of certification over licensure is that a client who is familiar with the level of expertise of his lawyer who may not otherwise qualify for, or choose to become, a criminal law specialist, may use this lawyer and not be forced to go to a licensed specialist. This is particularly important in smaller areas where information sources about all lawyers may be better and the availability of licensed criminal law specialists may be poor.

If a higher competence level is clearly needed and a decision is made to risk the possible adverse effects, there still remains the practical difficulties of creating a new standard which clearly ensures the competence to handle all criminal law problems.⁸⁵

G . Recommendations

1. No specialization program based on experience or education requirements should be instituted generally.
2. More information should be supplied to the public about lawyers' areas of practice, years of experience, professional development and basic office information without providing any further guarantee of competence beyond the admission level.
3. Where there appears to be a significant competence problem in a specific subject area, for example criminal law, consideration might be given to instituting a program that determines appropriate standards for specialists in such an area and certifies specialists against these standards.

Footnotes

1. In this context "unable" means consumers lack information and lack the ability to weigh information properly.
2. Proposed Ontario programs as well as United States jurisdictions are canvassed in Section III.
3. Charles W. Joiner, Specialization in the Law: Control It or It will Destroy the Profession, (1955), 41 A.B.A.J. 1105. See also Poffendorf, Legal Specialization-why the Objections, (1957-58) 12 U. of Miami L.R. 228 where he defines legal specialization as "the concentration of effort by an individual in one primary field or activity of law for the purpose of developing his skill and proficiency in that field or activity to the highest possible degree."
4. When specialization is used in the medical context, expertise in addition to concentration is implied.
5. Definitions of specialists include:

"Experienced Specialist: One who has frequently performed a specified kind of work, such as work involving similar tasks, work products, legal doctrine or person or institution dealt with.

Trained Specialist: One who has learned to perform a specified kind of work. His training may come from experience or in some other way, such as formal education in a school or in a training program.

Accredited Specialist: One who has been authorized to perform a specified kind of work.

Specialist by Reputation: One who is reputed to be a specialist.

Specialist by Representation: One who advertises or otherwise holds himself out as being a specialist.

Exclusive Specialist: A person who will perform only one specified kind of work or represent only one client.

Expert: A specialist with a high degree of competency."

Sydney L. Robins, Our Profession and The Winds of Change, (1972), 6 L.S.U.C. Gazette 137 at 143.

6. See The Federation of Law Societies of Canada, Report of the Special Committee on Specialization in the Practice of Law, J.H. Laycroft, Chairman, (1972); and, Report of the Committee of the Law Society of Alberta, "Specialist Certification in the Legal Profession", A. William Cox, Chairman, (1972).

7. See Appendix A to this chapter for a summarized history of specialization in the U.S.
8. Victor P. Alboini, Certification of Legal Specialists: A Progressive or Regressive Step, July 20, 1973, citing the following newspaper articles: "Let Lawyers Advertise Their Specialties", Toronto Star, editorial June 20, 1972; "Need Seen for Lawyers to Advertise Their Specialty", Toronto Star, June 17, 1972; "Moving Bravely Towards The Twentieth Century", Financial Post, February 19, 1972; Robert Catherwood, "These Legal Specialists, They May be Made Official", Financial Post, February 26, 1972; "Much Too Exclusive", Financial Post, June 8, 1972; Robert Catherwood, "Lawyers Argue Specialization", Financial Post, December 9, 1972; "Nobody Here but us Lawyers", Financial Post, December 16, 1972.
9. See Alboini, ibid., and see "Certification Stalls in Committee", (1974), 3 Ontario Bar News 5:4.
10. See Appendix E to this chapter for a description of the Law Society of Upper Canada Specialization Plan, November 9, 1972.
11. For the purposes of this section specialization program refers to any program which permits the announcement by a lawyer of areas of practice based on some established criteria and supervised by some regulatory body.
12. See Rulings 1, 3(1), 10 and 16. Ruling 24, which specifically prohibits a lawyer from in any way describing himself as a specialist, states: "A solicitor may not, by published notice or otherwise, describe himself as a "specialist" in any branch of law or knowingly permit himself to be so described. A number of announcement cards that are objectionable on this basis have come to the attention of the Committee. They announce, for example, that 'Mr. X will be associated with the firm "specializing in industrial relations" or "taxation matters".' On the other hand, if a solicitor has confined or restricted his practice to a certain branch of law, there is no objection to his announcing this in such terms or to his permitting himself, if the occasion requires it, to be described as having done so."
13. Rules of Professional Conduct, Law Society of Upper Canada, 1978. See Appendix B for sections of the Rules.
14. Canadian Bar Association, Code of Professional Conduct, 1974.
15. See Appendix B to this chapter for the sections of Chapter XIII of the Code entitled "Making Legal Services Available."

16. "A lawyer or firm may circulate among the profession or among his or its clients or publish in any newspaper in Ontario, announcements in good taste, without photographs, (other than at the time of call to the Bar), containing only information pertaining to his or its practice such as change of office hours, change of address or of personnel. A lawyer may insert a card, notice or announcement in good taste in any law list, legal directory, legal periodical or similar publication, when such publication has been approved by convocation and on such terms as convocation may from time to time approve. Such approval may be withdrawn at any time." See other additions in Appendix B to this chapter.
17. See S.C. 1974-75-76, c.76, s.32(1)(d), 32(2)(f) and 32(3) 32(2)(f)
(2) Subject to subsection (3), in a prosecution under subsection (1), the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

(f) the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media,

32(3)
Subsection (2) does not apply if the conspiracy, combination, agreement or arrangement has lessened or it likely to lessen the competition unduly in respect of one of the following:
(a) prices, (b) quantity or quality of production, (c) markets or customers, or (d) channels or methods of distribution, or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.
18. See Gordon F. Henderson, "Advertising and Professional Fees under The Combines Investigation Act", 1977 L.S.U.C. Special Lectures 411 at p.427. "The regulatory power may have to yield to the need of the public for relevant information especially in the areas of expertise, qualifications, and perhaps the cost and other charges that are recognized and protected by The Combines Investigation Act. Any regulation on the basis of the Code of Ethics that would unduly limit the distribution of such information to permit the customers to make decisions may offend The Combines Investigation Act. Such a rule may be argued to have the effect of restricting the availability of professional services to the public."

19. See Chapter IV of this working paper.
20. This sector includes high income individuals who have social and other connections with business clients.
21. See Chapter IV of this working paper, Business Client, and see Barlow F. Christensen, Lawyers for People of Moderate Means, Some Problems of Availability of Legal Services, (Chicago, Illinois: American Bar Foundation, 1970) at p.129.
22. See Christensen, ibid. at p. 129 for a discussion of the nature and scope of the problem of bringing lawyers and clients together.
23. See Chapter IX.2 of this working paper.
24. Connie Nakatsu, Client Survey - Law, Report, prepared for the Professional Organizations Committee (1978), p.14.
25. Supra, Chapter IV, p.31.
26. Supra, Chapter IV, p.65-66.
27. Jack Ladinsky, The Traffic in Legal Services: Lawyer-Seeking Behaviour and the Channeling of Clients, (1976), 11 Law and Society 207.
28. Reiss and Mayhew (1969) Detroit area study. See Ladinsky, ibid., at p. 219.
29. "To the extent that individuals are unable to perceive variations in quality among lawyers, the value of collective information is limited. The potential benefits are also limited by the number of times the information is to be used - individual clients however are infrequent purchasers of lawyers' services. Moreover, the costs of obtaining information may be high. Individuals who have had infrequent dealings with lawyers are likely to be intimidated, afraid of asking naive questions or worse, not knowing what to ask. Indeed, the tendency to rely on others for evaluation of alternative lawyers would be greater the greater the discrepancy between desired and available information; that is, the higher the search cost", Chapter IV of this working paper, p.33.
30. Data from the client survey show the kind of information clients had, and the kind of information they would have liked to have prior to the selection of a lawyer. The results showed that the information most available related to expertise, and satisfaction or success rate as experienced by others. The type of information asked for by clients showed that 65.8% of users wanted information about experts. Although client users also wanted more information about personal attributes, by far the largest information gap felt by clients was in the area of lawyer expertise. Furthermore, the data relating to the importance of particular qualities in the

30. (cont'd) choice of a lawyer show that apart from honesty the largest percentage of individuals valued competence, expertise, qualifications and reputations.
31. See Ladinsky, op. cit., n.26 at p.219.
32. See Chapter IX.4 of this working paper.
33. "As practitioners we find ourselves deluged with an avalanche of decisions from courts in Canada and elsewhere. Royal Commissions, task forces, law reform commissions and various and sundry committees are busier than ever before, recommending new departures for legislatures to take. And legislatures are turning out unprecedented volumes of new law. No lawyer can be expected to keep abreast of all of these developments and perform all legal tasks that may be required of him." Robins, op. cit., n. 5 at p.141.
34. See Appendix C to this chapter for ethical rules requiring competence.
35. See California program described in Section III.
36. See John D. Arnup, "Fusion of the Professions", (1971), 5 L.S.U.C. Gazette 38.
37. Irvin E. Fasan, Thoughts On Specialization and the English Experience, (1969), 3 The John Marshall Journal of Practice and Procedure 66 at p.76.
38. Chief Justice Evans at the annual re-opening of Ontario Supreme Courts, January 9, 1977, blamed "inexperienced" and "occasionally ill-prepared" counsel for delays in court trials. The same discussion has been taking place in the U.S. - see Warren E. Burger, "Special Skills of Advocacy", (1974) 48 Fla. B.J. 154, and "Federal Second Circuit Plan: Minimum Educational Requirements for Federal Trial Advocates", from the American Bar Association Committee on Specialization Report of February 1975, reprinted in Zehnle, See n.41, Appendix G.
39. For an elaboration of these and other economic effects see infra, Section D.2.
40. See Appendix D to this chapter for a Survey of Legal Specialization in U.S. jurisdictions as of January 31, 1978.
41. Richard H. Zehnle, Specialization in the Legal Profession, An Analysis of Current Proposals, American Bar Foundation, (Chicago 1975), p.1.
42. Ibid., p.3.
43. Speech delivered to the National Conference of Bar Presidents 1977 Midyear Meeting in Seattle.

44. The program requires 5 years experience to participate.
45. See Appendix D to this chapter.
46. Three years experience is required in Florida.
47. Five years experience is required in New Mexico.
48. See Appendix E to this chapter for a detailed history of these responses.
49. Report of the Special Committee on Specialization of the Law Society of Upper Canada, January 20, 1972.
50. Report of the Standing Committee on Specialization, Roderick N. Petrey, Chairman, August, 1977, at p.19.
51. Infra, Section D.3 for a discussion of possible legal consequences of specialization.
52. See Rules of Professional Conduct, L.S.U.C., 1978, Rule 2.
53. See Walter Gellhorn, "The Abuse of Occupational Licensing, (1976), 44 The University of Chicago Law Review 6.
54. Marvin W. Mindes, Lawyer Specialty Certification: The Monopoly Game, (1975), 61 A.B.A.J. 42.
55. "Economists tell us that one can sometimes have competition among four firms as easily as among four hundred, but a reduction in the number of lawyers will inevitably reduce a client's range of choice", Thomas D. Morgan, The Evolving Concept of Professional Responsibility, (1977), 90 Harvard Law Review 702 at p.718.
56. See Code of Professional Conduct, Canadian Bar Association, Chapter XIII, Rule 4, cited in Appendix B.
57. Ibid.
58. See also Chapter IX, p.215.
59. Ian W. Outerbridge, "Professional Negligence and Errors and Omissions Insurance", 1977 L.S.U.C. Special Lectures 75 at p.80.
60. See Brenner v. Gregory, 1973, 1 O.R. 252 (O.H.C.J.) and Hauck v. Dixon (1975), 10 O.R. (2d) 605 (O.H.C.J.).
61. (1975) 530 p. 2d 589.
62. Richard J. Schnidman, Mark J. Salzler, The Legal Malpractice Dilemma: Will New Standards of Care Place Professional Liability Insurance Beyond the Reach of the Specialist, (1976), 45 Cincinnati Law Review 541 at p.545.

63. Ibid., at p.548.
64. C.B.A. Code of Professional Conduct, Chapter II, s.3, p.4.
65. A lawyer who announces that he practises in a specific field could be expected to exercise reasonable care according to accepted standards of practice arrived at objectively.
66. Report of the Law Society of Alberta, op. cit., n.6 at p.4.
67. See Willard H. Pedrick, Collapsible Specialists, (1969), 55, A.B.A.J. 324 at p.328.
68. For a complete analysis of this data, see Chapter VII of this working paper.
69. Ibid., see Table VII.1 and p.145.
70. Ibid.
71. Ibid., see Table VII.3.
72. Ibid.
73. Ibid., see Table V.II.
74. See Chapter VII of this working paper.
75. See Table VII.6, p.157, of this working paper.
76. See Table VII.7, p.158, of this working paper.
77. Chapter VII, p.155.
78. See Table VII.7, p.158, of this working paper.
79. Chapter VII, Table VII.9, p.161.
80. Chapter VII, Table VII.10, p.164.
81. Supra, Section B.1.
82. See Chapter IX.4.b(ii).
83. Supra, Section B.1.
84. Supra, Section B.1.
85. Although such a program is in place in California, no assessment of its effectiveness has taken place since its institution.

APPENDIX A

History of Specialization in the U.S.

Although "[a]t the time of the Revolutionary War a well educated and highly trained bar had developed within the colonies", - this gave way during the period from 1836 to 1870 to a relaxation or elimination of the requirements for a definite period of preparation for law practice in the belief that "the only practical requirement for a lawyer should be his ability to know how to read and write." To regain the honour and dignity of the profession lost during this "era of decadence" - bar associations reappeared and in 1908 strict proscriptions against advertising were adopted. The original version of Canon 27 which constituted the primary control over advertising, stated:

The most worthy and effective advertisement possible, even for a young lawyer, and especially for his brother lawyers, is the establishment of a well merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct.

"To ensure that such a reputation would not be artificially manufactured the Canon continued by prohibiting almost every form of direct or indirect advertising including the inspiration of newspaper comments. Only the circulation of 'ordinary simple business cards' was allowed."

Charles W. Joiner, former dean of Wayne State University Law School and strong supporter of specialization, described the history of the ethical standards relating to specialization.

"When the Canons of Ethics were adopted in 1908 they were based upon the presumption that the

lawyer was capable of performing all legal tasks, and in most instances the lawyer would attempt to perform these tasks when called upon by appropriate clients. The problem that seemed to be the most pressing at that time was the problem of trying to prevent champerty, maintenance and barrettry. Therefore, these canons relied upon strong, anti-advertising provisions which were applied across the board, even among lawyers. There could be no advertising or cards. It wasn't until 1928 that the canons began to recognize directly the type of advertising that would be appropriate among lawyers, and that year canons were adopted providing for law lists and recognizing the fact that there were in fact specialists growing up in the legal profession and specialists were a part of and governed by the Canons of Ethics. In 1933 lawyers were permitted to send notices to other lawyers for specialized legal services. In 1937 the canons were amended to permit the advertising in legal directories."

In 1951 the categories of information that could be published in law lists was enlarged to permit "patent and trademark attorneys as well as those specializing in admiralty law to claim their fields as recognized specialties and to advertise this fact in the law lists as well as on their letterheads." Apart from this exception with respect to patent and admiralty lawyers, all other lawyers were prohibited from announcing their specialties apart from legal directories.

Mr. Joiner recalled the nature of ethical questions and complaints which gave rise to the study of specialization by the American Bar Association in 1952:

"Throughout the history of the profession the ethics committee has had before it many problems pertaining to lawyers who attempt to specialize and advertise their specialty. 1) Lawyers wanted to tell other lawyers of special study, special expertise; 2) Lawyers wanted to tell the public the same information; 3) Lawyers wanted

to tell the public that they limit their practice to certain matters; 4) When lawyers refer matters to other lawyers they get into disputes as to how fees should be divided and as to when clients need to be returned.

During this same period of time a variety of general complaints were voiced in speeches by members of the bar, in reports of committees of the bar, in letters to responsible bar officials, detailing what were thought to be serious objections to the Canons of Ethics. I list four of these complaints.

1. The fact that anyone could anoint himself as a specialist by simply calling himself a specialist in the legal directories was not adequate to help lawyers to determine who were qualified.

2. It was foolish to think that lawyers could practise all parts of the law with equal ability. In fact, it was pointed out many times that this was one of the major reasons for the growth of large law firms. Simply to provide a method whereby there could be an omniscient lawyer entity required the presence of eight or ten lawyers in the firm.

3. Many specialties required additional study and experience. A lawyer practising well in these areas must be truly highly qualified.

4. The medical profession was suggested as adding a dimension to what might be learned in the legal profession, both good and bad."

APPENDIX B

Canadian Bar Association Code of Professional Conduct: Advertising

The Rule of Chapter XIII of the Code entitled "Making Legal Services Available" reads:

"Lawyers should make legal services available to the public in an efficient and convenient manner which will command respect and confidence and by means which are compatible with the integrity, independence and effectiveness of the profession.

Part 1 of the Commentary to that Rule attempts to explain the need for supplying broader information:

1. It is essential that a person requiring legal services be able to find with a minimum of difficulty or delay, a lawyer who is qualified to provide such services. In a relatively small community, where lawyers are well known, the person will usually be able to make an informed choice and select a qualified lawyer in whom he has confidence. However in larger centres these conditions will not obtain and as the practice of law becomes increasingly complex and the practice of the individual lawyer tends to become restricted to particular fields of law, the reputations of lawyers and their competence or qualification in particular fields may not be sufficiently well known to enable a person to make an informed choice. Thus one who has had little or no contact with lawyers or who is a stranger in the community may have difficulty in finding a lawyer who has the special skill required for the particular task. Telephone directories, legal directories and referral services will help him find a lawyer, but not necessarily the right one for the work involved.

Parts 4, 5 and 6 of the Commentary argue against promotional advertising and for limited informational advertising including "where permissible a reference to the fact that a lawyer is an accredited specialist or that his or her practice is restricted to a particular field." These parts state:

"4. The means by which it is sought to make legal services more readily available to the public must be consistent

with the public interest and must not be such as would primarily advance the economic interests of any individual lawyer or law firm, or detract from the integrity, independence or effectiveness of the legal profession. Unregulated advertising is not in the interest of the public or the profession. Such advertising has for good reason been prohibited by all professions. It would be apt to encourage self-aggrandisement at the expense of truth and could mislead the uninformed and arouse unattainable hopes and expectations resulting in the distrust of legal institutions and lawyers. Moreover, there are sound economic reasons for not allowing unregulated advertising, quite apart from the traditional reasons for which the professions have rejected it. There is the risk that such advertising would tend to increase the cost of legal services and in the course of time would tend to bring about a concentration of legal services in large firms that could afford to advertise freely to the detriment of the medium size and small firm, thereby unduly limiting the choice of persons seeking independent legal representation.

5. Limited advertising (as opposed to unregulated advertising) can be of much assistance to persons seeking legal services, for example (a) advertising on behalf of the profession by Governing Bodies and by groups authorized by them; (b) publication of names on legal aid panels and referral services sponsored or approved by Governing Bodies; (c) the use of nameplates on law offices and the publication of professional cards and announcements, including where permissible a reference to the fact that a lawyer is an accredited specialist or that his practice is restricted to a particular field. The overriding considerations are that the content of such advertising should be true and should not be capable of misleading those to whom it is addressed.

6. When considering whether or not limited advertising in a particular area meets the public need consideration must be given to the clientele to be served. For example, in a small community with a stable population a person who requires a lawyer for a particular purpose will not have the same difficulty in selecting one as someone in a newly-founded community or a large city. Thus the Governing Body must have freedom of action in determining the nature and content of the limited advertising that will best meet the community need.

The following are sections from the revised Rules of Professional Conduct of the Law Society of Upper Canada which replace and add to section 5:

5. A lawyer or firm may circulate among the profession or among his or its clients or publish in any newspaper in Ontario, announcements in good taste, without photographs, (other than at the time of call to the Bar), containing only information pertaining to his or its practice such as to change of office hours, change of address or of personnel. A lawyer may insert a card, notice or announcement in good taste in any law list, legal directory, legal periodical or similar publication, when such publication has been approved by Convocation and on such terms as Convocation may from time to time approve. Such approval may be withdrawn at any time.

6. Lawyers should not use on their letterhead or on signs identifying their office the names of persons who if living are not qualified to practise in Ontario, or if dead never were qualified to practise in Ontario.

Lawyers who practise in the industrial property field may show the names of patent and trade-mark agents registered in Canada who are identified as such but who are not lawyers.

Firm names used in letterheads or signs should comply with paragraph 1 of this Ruling.

A lawyer's letterhead and the signs identifying his office should be restricted to the name of the lawyer or firm, a list of the members of any firm including counsel practising with the firm and the words "barrister-at-law", "barrister and solicitor", "lawyer", "law office", or the plural where applicable, the words "notary" or "commissioner for oaths" or both, and their plural where applicable, may be added. A statement of office hours or alternative addresses may appear and the words "patent and trade mark agent" in proper cases.

Such words as "money to loan", "insurance office", "proctors", "attorneys", "mortgages", "solicitor to the town-ship", or any other client, and the like should not be used.

Lettering and signs should be of modest size and in good taste. As a general guide, no sign need have the letters larger than six inches in height.

The Professional Conduct Committee may in special circumstances authorize exceptions to this paragraph.

7. A lawyer's professional card should contain no more than the information permitted by these rules on his, or his firm's letterhead. For a lawyer who is not in private practice, the card may include the name of his employer.

8. The use of the phrase 'and company' in a firm name by a lawyer, either practising alone or in association with others, is improper on the ground that such use has a commercial connotation not in keeping with the nature of the profession.

9. Informational advertising (as opposed to promotional advertising) can be of assistance to persons seeking legal services, for example (a) advertising on behalf of the profession by the Society and by groups authorized by it; (b) publication of names on legal aid panels and referral services sponsored or approved by the Society; (c) the use of nameplates on law offices and the publication of professional cards, letterheads and announcements, which includes a reference to the fact that a lawyer has restricted his practice to a particular field or fields. The overriding considerations are that the content of such advertising should be true and should not be capable of misleading those to whom it is addressed.

APPENDIX C

Canadian Bar Association Code of Professional Conduct: Competence

Rule 2 of the revised Rules of Professional Conduct, 1978,
state:

- "(a) The lawyer owes a duty to his client to be competent to perform the legal services which the lawyer undertakes on his behalf.
- (b) The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation."

Those sections of the commentary that have a bearing on
specialization are the following:

- "2. As a member of the legal profession, the lawyer holds himself out as knowledgeable, skilled and capable in the practice of law. Accordingly his client is entitled to assume that he has the ability and capacity to deal adequately with the legal matters which he undertakes on the client's behalf.
- 3. It follows that the lawyer should not undertake a matter unless he honestly believes that he is competent to handle it or that he can become competent without undue delay, risk or expense to his client. If the lawyer proceeds on any other basis he is not being honest with his client. This is an ethical consideration and is to be distinguished from the standard of care which a court would invoke for purposes of determining negligence.
- 4. Competence in a particular matter involves more than an understanding of the relevant legal principles: it involves an adequate knowledge of the practices and procedures by which such principles can be effectively applied. The lawyer should keep abreast of developments in the branches of law wherein his practice lies.

5. The lawyer must be alert to recognize his lack of competence for a particular task and the disservice he would do his client if he undertook that task. If he is consulted in such circumstances he should either decline to act or obtain his client's instructions to retain, consult or collaborate with a lawyer who is competent in that field. The lawyer should also recognize that competence for a particular task may require that he seek advice from or collaborate with experts in scientific, accounting or other non-legal fields, and he should not hesitate to seek his client's instructions to consult experts in such a situation."

These rules clearly require a lawyer to remain competent in all fields of practice or to limit his practice to those areas in which he is competent.

APPENDIX D (Part 1)

U.S. Model Specialization Plans

	<u>California</u>	<u>New Mexico</u>	<u>Florida</u>
1. Title	certification	self- identification	self- designation
2. Objective	certify competence	encourage practice limitation & information flow	identify specialities to encourage competence
3. Adoption of Plan	February 1971	July 1973	Sept. 1974
4. Operating	1973	Sept. 1973	Jan. 1976
5. Size of Bar	40,000	1,500	14,000
6. Participation	3,000 (Jan. 1977)		
7. Administration	California Board of Legal Specialization (9) assisted by Advisory Commission (9) in each Specialty	Specialization Board	Board of Governors assisted by Specialization Committee
8. Fields	Criminal Law, Workmen's Compensation, Taxation	62 Fields including general practice	3 out of 20 areas in addition to general practice
9. Grandfather Provision	10 years with substantial involvement in last 3 years	-	-
10. Experience	-5 years law practice -substantial involvement for period= actual performance -references	-5 years -60% of time in field (affidavit)	-3 years -substantial experience

	<u>California</u>	<u>New Mexico</u>	<u>Florida</u>
11. Education & Examination	-special educational experience -written exam	-	-promise to continue legal education
12. Period	certification for 5 years	-	3 year renewals
13. Renewal Requirements	-10 years practice -substantial involvement -special educational experience OR written exam	-	30 hours education in each specialty
14. Consequences	-certificate -announce in legal direct. Yellow pages, and circulate among lawyers	list "specializing in..." in Yellow Pages, in bar lists, on letterheads, on personal cards	announce in Law Lists, Yellow Pages on letterhead personal card and on office door
15. Caveat	-	disclaimer by Specialization Board	Florida bar disclaims any implications as "expert" or more competent than any other lawyer
16. Other Stages	being considered	advertise limitation of practice to 1, 2 or 3 fields	
Criticisms	-lower participation -high administrative costs -difficulty establishing standards to ensure competence -fields of practice chosen don't correspond to public need	-public will construe "specialization" as implying competence -little encouragement to continued professional improvement	-problems with requirements not insuring competence -disclaimer is inadequate -general practice as a specialty lacks meaning

SURVEY OF LEGAL SPECIALIZATION--January 31, 1978

*denotes a change in status
since previous report

STATE	COMMITTEE	CHAIRMAN	STATUS
Alabama	Advisory Committee on Continuing Legal Education	Tom Elliott London, Yancey, et al 2100 First Nat'l Southern Natural Building Birmingham, AL 35203 205/251-2531	*The Board of Bar Commissioners gave approval to the Continuing Legal Education Committee to develop a plan for voluntary specialization. The plan has been completed and will be presented to the Board of Commissioners in February 1978.
Alaska	Committee on Specialization	John Anthony Smith 201 East Third Avenue Anchorage, AK 99501 907/278-4696	The Committee submitted a proposed legal specialization plan to the Alaska State Bar Board of Governors for initial consideration on January 27, 1977. It is a "Board Certification" type plan and has two sets of standards for qualification: one including a written examination, and one without. Other standards are a minimum years of practice of law, significant involvement in the particular field, special competence in the particular field, educational experience, and passing an oral examination.
Arizona	Board of Legal Specialization	Howard N. Singer Arizona Title Bldg. 111 West Monroe Phoenix, AZ 85003 602/252-7181	The Board of Governors has decided to circulate the plan widely to members of the Alaska Bar before taking further action at its May '77 meeting. If approved at that meeting, the plan will go directly to the House of Delegates which will convene immediately subsequent to the Board meeting. In February '77 the Arizona Supreme Court approved a pilot project covering workmen's compensation, criminal law and tax. A Board of Legal Specialization has been appointed and is functioning, and the respective advisory commissions have developed and implemented standards for criminal law and tax fields. The Board will consider approval of workmen's compensation standards in September, 1977.

STATE	COMMITTEE	CHAIRMAN	STATUS
Arizona (continued)			<p>The standards of specialty recognition now under development are intended to satisfy the requirements of the plan that an applicant demonstrate substantial involvement in the field and admission to practice for a minimum of five years. No examination is required. Renewal will be required at least every five years and will necessitate a satisfactory showing of "continuing education experience" during the period of recognition.</p>
Arkansas (Arkansas Bar Assn.)	Specialization and Advertising Committee	Jeff Starling Box 8509 Pine Bluff, AR 71601 501/534-5221	<p>*The committee is preparing to draft a proposal for specialization in the State of Arkansas in anticipation that the Arkansas Supreme Court may well appoint the Arkansas Bar Association as its designee for the purpose of establishing a specialization program. The next scheduled meeting of the committee is December 28, 1978.</p>
California (State Bar of California)	Board of Legal Specialization	James B. Corison P. O. Box 1028 Riverside, CA 92502 714/686-1450	<p>The California pilot program, approved by the Supreme Court of California in 1971, implemented in 1973, and revised in 1975 and 1976, attempts to identify lawyers who are competent in the recognized specialty fields. In three categories of law practice--tax law, criminal law and workmen's compensation law--the California program requires a minimum period of law practice, examinations, peer ratings, education, specific types of legal practice experience ("substantial involvement") and concentration of practice in the specialty field for certification. Extensive use of "grandfathering" was permitted during the first two years of the program; future grandfathering provisions for additional fields of law have not been determined. Recertification is required every five years. While approval of bankruptcy, family law labor law and probate law fields is pending, the Board of Governors has appointed consulting groups (not to be confused with advisory commissions) to begin developing standards for those fields when and if they are approved in the future.</p>
Colorado (Colorado Bar Assn.)	Specialization Committee	Jesse Manzanares University of Denver College of Law 200 West 14th Avenue Denver, CO 80204 303/753-3210	<p>*A plan has been proposed and submitted to the Colorado Supreme Court which would certify lawyers as specialists in the initially approved fields of taxation, securities, and labor law. Certification would be based on standards of involvement in the specialty field, special education experience in the field, and passing a written examination. Grandfathering would be</p>

<u>STATE</u>	<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>STATUS</u>
Colorado (continued)			<p>allowed in certain fields initially and recertification would be required at five year intervals.</p> <p>The Supreme Court is not expected to take any action on this proposal in the immediate future. Meanwhile, an Ad Hoc Committee, working independently of the Specialization Committee, is studying the certification of trial lawyers.</p> <p>In view of Amendments to Canon 2 of the Colorado Code of Professional Responsibility, adopted by the Colorado Supreme Court December 29, 1977 and effective January 2, 1978, which amendments deal with advertising and allow attorneys to designate limitations upon their practice, it appears that the court will take no action on specialization in the immediate future.</p>
Connecticut (Connecticut Bar Assn.)	Specialization Committee	Vincent Dowling 266 Pearl Street Hartford, CT 06103 203/527-1141	*On February 2, 1978 the Specialization Committee will meet to seek a consensus on revising its Florida-type designation of areas of concentration of practice to reflect developments in the advertising situation.
Delaware (Delaware Bar Assn.)	Specialization Committee	John M. Bader 1102 West Street Wilmington, DE 19801 302/656-9850	*The committee feels the public's interest is sufficiently served by a minimally-regulated system of designation whereby the lawyer indicates one or more areas of practice in the classified advertising section of the telephone directory. The committee recommends a system whereby the telephone directory would publish, in addition to the straight alphabetical listing of lawyers, a list of certain designated specialty areas alphabetically, with lawyers' names appearing under each according to the individual lawyer's choice. A lawyer could be listed under more than one specialty heading, but would be required to show, by a numeral in parentheses with footnote explanation, how many such headings he or she appears under.
			The Bar Association (or other Supreme Court-designated agency) would publish certain disclaimers similar to those used in New Mexico, to the effect that the indication of these areas of concentration does not mean that any bar association or agency has certified or approved the individual lawyer, and that the listing of a given area of concentration does not necessarily mean that the lawyer practices in all areas within that general category.

<u>STATE</u>	<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>STATUS</u>
Florida (The Florida Bar)	Designation Coordinating Committee	Earl B. Hadlow P. O. Box 4099 Jacksonville, FL 32201 904/354-1100	*On January 12, 1978, the Board of Governors adopted the Designation Coordinating Committee's proposed general provisions for implementation of certification plans in various areas of practice. General guidelines for certification fall into two categories: (1) creation of a committee with responsibility for implementation and administration of all certification programs; and (2) minimum standards for certification, recertification, and revocation of certification, as well as an appeal mechanism for denial of certification and administration of finances.
		Barry D. Davidson, Vice-Chairman 1414 First Nat'l Bank Building 100 Biscayne Blvd. So. Miami, FL 33131 305/577-2823	The "umbrella" guidelines for implementation and administration of all certification programs now being developed or that might be developed in the future were rejected by the Board. The Board requested that the guidelines be published in full and invited comment from all members of the Bar.
			A copy of the "General Provisions for Implementation of Certification Plans" is attached.
Georgia (State Bar of Georgia)	Specialization and Recertification Committee	Daniel B. Hodgson Citizens & Southern Nat'l Bank Bldg. Atlanta, GA 30303 404/588-0300	*The State Bar has directed the Committee to make specific proposals on specialization at the March meeting of the Board of Governors. It is anticipated that those proposals will authorize the development of a designation plan that is "open-ended" to allow for the evolution of certifiable standards of competence over the years to come.
Hawaii (Hawaii State Bar Assn.)	Ad Hoc Committee on Specialization	C. Frederick Schutte P.O. Box 26 Honolulu, HI 96810	*Waiting for ABA Committee's formal report before forming a special committee to study and evaluate the various specialization plans.
Idaho (Idaho State Bar)	Recertification and Specialization Committee	Blaine Evans Box 1559 Boise, ID 83701 208/343-5454	The committee has proposed a plan of self-designation in up to three fields of practice. A minimum of three years of practice is required. The proposal is now under consideration by the Board of Governors.

STATE	COMMITTEE	CHAIRMAN	STATUTE
Illinois (Illinois State Bar Assn.)	Specialization Committee	Lawrence H. Eiger 11 South LaSalle St. Suite 1625 Chicago, IL 60603 312/332-2066	*The certification proposal submitted by the Specialization Committee to the Assembly in November, 1977 was rejected by the Assembly.
Indiana (Indiana State Bar Assn.)	Specialization Committee	Terrill D. Albright 810 Fletcher Trust Building Indianapolis, IN 46202 317/636-4535	The Specialization Committee and the Indiana Judicial Council on Legal Education and Competence at the Bar will conduct a seminar on October 13, 1977, discussing the pros and cons of specialization. The Council distributed to all Indiana attorneys a survey questionnaire which mandatorily must be completed. Hon. Robert H. Staton, Judge, Indiana Court of Appeals, and Secretary of the Council, has written a series of five articles on specialization which appeared in <u>Res Gestae</u> , the Indiana Bar monthly.
Iowa (Iowa State Bar Assn.)	Specialization Committee	Thomas McCollum Hubbell Building 10th Floor Des Moines, IA 50309 515/283-3100	*The committee made a recommendation to the Board of Governors of the Bar Association for a two-tier plan - designation and certification. Action was deferred until March 1978 Board of Governors meeting. Amendments were made to the Code of Professional Responsibility on advertising at the December meeting of the Board of Governors. Part of the recommendation included 25 areas of practice in which a lawyer could designate. In order to be able to designate, a percentage of time has to be spent in that area of practice and the attorney must practice in a continuing legal education program in areas of practice. Recommendation of the Board of Governors has been forwarded to the Iowa Supreme Court for approval.
Kansas (Kansas Bar Assn.)	Special Committee on Lawyer Special- ization	Hon. Terry Bullock 311 Shawnee County Courthouse Topeka, KS 66603 913/295-4375	*The Committee's report concerning lawyer specialization recommends a dual system: (1) area of practice identification, and (2) Commission certification of specialists. This report has been mailed to all Kansas lawyers for comment. The Kansas Bar Association Executive Council will act on the report February 3. Upon adoption by the Executive Council, the report will be forwarded to the Kansas Supreme Court for consideration. A copy of the plan is attached.

STATE	COMMITTEE	CHAIRMAN	STATUS
Kentucky (Kentucky Bar Assn.)	Specialization Committee	Robert J. Turley First Federal Building Lexington, KY 40507 606/252-1705	*A two-step plan of specialization presented to the Board of Governors in September, 1976 and tabled is again under consideration by the Board of Governors in light of an economic and opinion survey of Kentucky lawyers which disclosed that 54% of them are in favor of the institution of a formal program of specialization.
Louisiana (Louisiana State Bar Assn.)	Special Committee on Advertising, Specialization, and Recertification	Robert E. Leake, Jr. 4600 One Shell Square New Orleans, LA 70139 504/581-2121	*The Subcommittee on Specialization plans to have a final report to present before the Board of Governors at their spring meeting in April, 1978.
	Sub-Committee on Specialization	Phillip A. Wittmann 1000 Whitney Building New Orleans, LA 70130 504/581-3200	
Maine (Maine State Bar Assn.)	Specialization Committee	Robert F. Preti 443 Congress Street Portland, ME 04111 207/775-5831	Studying developments in other states.
Maryland	None		
Massachusetts (Massachusetts Bar Assn.)	Professional Education Committee	Brian R. Merrick Fifteen Broad Street Boston, MA 02109 617/227-6530	*The committee has submitted a proposed rule to the Supreme Court which would allow specialization on a two-tier system: (1) self-designation of availability in certain fields upon the filing of an affidavit, and (2) statement of special competency only in the form of a statement of membership in an institute of specialty. The committee has begun a pilot specialty program with the institute of general practice. This program contains a grandfather clause and participants must be tested every three years on current developments.
Michigan (State Bar of Michigan)	Committee on Certification and Specialization	John L. Cote 1331 E. Grand River East Lansing, MI 48823 517/351-6200	The Representative Assembly of the State Bar and the Board of Commissioners has adopted a recommendation of the Committee on Specialization at its April, 1977 meeting that Michigan adopt a self-designation program tied to a requirement that for each area in which an attorney self-designates, such attorney must take ten hours of continuing legal education per year. This recommendation of the Committee on Specialization at its April,

STATE

COMMITTEE

CHAIRMAN

STATUS

Michigan
(continued)

1977 meeting that Michigan adopt a self-designation program tied to a requirement that for each area in which an attorney self-designates, such attorney must take ten hours of continuing legal education per year. This recommendation is currently pending before the Michigan Supreme Court.

The Supreme Court has directed that the State Bar (through the committee) also formulate and submit to the Court a proposed program for implementing a broad program of specialization.

Thus, Michigan is working on a two fold program at present. The committee is also analyzing, as is the Court, the impact of the Bates decision on this whole area and working closely with the Committee on Advertising.

The committee has proposed 24 areas of the law in which one may self-designate and has recommended adoption of these areas to the Board of Commissioners, and the committee has also recommended adoption of a proposed set of rules to implement the continuing legal education requirements of the self-designation program, insofar as the establishment and composition of a management board created for that purpose.

Minnesota
(Minnesota
State Bar
Assn.)

Committee on
Specialization

Thomas R. Thibodeau
811 1st National
Bank Building
Duluth, MN 55802
218/722-6331

During its June '76 annual meeting, the Minnesota Bar approved the "General Practice Identification Plan" whereby lawyers may identify in the yellow pages their availability to practice in up to three of seven specified areas of the general practice of law. In addition, the plan would permit publication of certain information in reputable law lists, legal directories or a directory published by a bar association consistent with the amendments to DR2-102(A)(6) adopted by the ABA on February 17, 1976 in Philadelphia.

The plan is intended to better facilitate consumer access to lawyers by aiding consumers using the yellow pages in selecting a lawyer for legal problems most frequently encountered. There is no educational or minimum experience requirement as a prerequisite to listing. The plan is not considered a specialization plan, nor is it intended to increase or certify the competency of lawyers.

STATE	COMMITTEE	CHAIRMAN	STATUS
Mississippi (Mississippi Bar)	Specialization and Certification	Jack W. Brand P. O. Box 380 Newton, MS 39345 601/683-2082	*The Committee is working on a plan to present to the State Bar Commissioners.
Missouri (The Missouri Bar)	Committee on Specialization	Harry A. Morris 2420 Pershing Road Kansas City, MO 64108 816/421-6767	*In July, 1977, the Board of Governors approved a revised draft of a plan on specialization and submitted it to the Missouri Supreme Court. The plan "recognizes" lawyers having substantial professional experience in specialty fields to be designated by the Board of Governors. A specialty field will be designated after a showing, among other things, of a need for specialization in that field in the interest of the public and the approximate number of lawyers devoting a substantial portion of their time to that field during the preceding five years.
Montana (State Bar of Montana)	Special Presidential Committee	Bruce R. Tool P. O. Box 2529 Billings, MT 59103 406/252-3441	The recognition of a lawyer as a certified specialist in a designated specialty field is based on a standard of substantial involvement in the field for not less than five years immediately prior to application. The plan is now before the Supreme Court and the Committee expects action within the next 60 days.
Nebraska (Nebraska State Bar Assn.)	Special State Committee on Specialization	John S. Zeilinger 1500 Woodmen Tower Omaha, NB 68102 402/344-0500	*The Board of Trustees authorized the formation of five sections this year as the first step towards a specialization program. The five sections are Probate and Taxation, Public Law, Litigation, Minerals and Land Use (this includes all land transactions), and Family Law and General Practice. Probate and Taxation, Public Law, and Minerals and Land Use Sections will be holding an interim organizational meeting in February. Litigation Section will be acted on in April; Family Law and General Practice Section is in the process of being organized.
			The committee has developed a "designation" plan which was submitted to the state bar House of Delegates in September. Final action on the proposal was deferred until the April state bar meeting at which time the House of Delegates voted not to adopt the plan. No action has been taken by the Committee since.

<u>STATE</u>	<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>STATUS</u>
Nevada (State Bar of Nevada)	Committee for Study of Legal Specialization	C. Clifton Young 232 Court Street Reno, NV 89501 702/786-7600	The committee has submitted to the Board of Governors a proposed plan but it is expected that further study and input on various other proposals will be necessary before the Board takes final action.
New Hampshire (New Hampshire Bar Assn.)	Special Committee on Specialization and Recertification	Arthur Nighswander 1 Mill Plaza Laconia, NH 03246 603/524-4121	The Board of Governors has approved in principle the recognition of specialists. The committee reported during the mid-winter meeting of the New Hampshire Bar Association and proposed standards for recognition of specialists in the field of taxation feeling that if that proposal were approved, the committee would begin looking into other areas. The general membership voted to resubmit the report back to the committee for further study so that further thought could be given as to whether the standards were too extreme, particularly with regard to minimum years of law practice.
New Jersey (New Jersey State Bar Assn.)	Committee on Specialization in the Legal Profession	Saul Wolfe Skoloff & Wolfe 17 Academy Street Newark, NJ 07102 201/624-1419	*Five years ago the Board of Trustees committed themselves to a pilot program on certification with six or seven specialties. This past year a recommendation was made to eliminate any pilot plan and go forward with a full blown plan. At present this recommendation is under study by the Board of Trustees of the State Bar Association.
New Mexico (State Bar of New Mexico)	Board of Legal Specialization	Leonard Pickering 920 Ortiz N. E. Albuquerque, NM 87101 505/268-3356	New Mexico began a self-designation program in 1973. The program identifies lawyers who concentrate or limit their practice to a few, designated fields of law practice. A lawyer who states by affidavit that he has devoted 60% or more of his time during each of the preceding five years to practice in a designation specialty field may hold himself out as "specializing" in that field of law. Further, he must continue to devote at least 60% of his practice time to his specialty field in order to continue eligibility for the use of such term. A lawyer (or law firm) who does not qualify as a specialist may state that he "limits" or "primarily limits" his practice to one, two or three fields. Lawyers who state that they limit their practice must actually do so; no other type of law work may be accepted. The specialization Board monitors compliance with the plan's standards with a disciplinary board of the

STATE

New Mexico
(continued)

COMMITTEE

New York
(New York
State Bar
Assn.)

Special Committee
on Specialization
in the Law

CHAIRMAN

David Fromson
Lincoln Building
60 East 42nd Street
New York, NY 10017
212/682-5055

STATUS

state Supreme Court adjudicating complaints or compliance problems which are not solved informally. A list of 62 designated fields of law is available, with possible additions in the future. Discussions continue about adding requirements for continuing legal education.

*On June 25, 1977, the New York State Bar Association House of Delegates approved a Plan of Legal Practice Identification Specialization. A lawyer can self-designate without elaboration up to three areas of practice, in addition to "general practice", and must agree to strive to enhance and maintain proficiency in the identified fields. The initial term of this self-identification is for three years and each renewal term for five years.

The "certification of specialists" portion of the plan allows a lawyer to publicize if he or she is a "certified specialist" in up to three fields of practice, so long as standards of minimum period of law practice, substantial involvement, special education and other training, and passage of a written examination in each field are met. Certification and recertification terms are for five years.

The plan also requires the State Bar to publish notices in directories and other media to explain to the public the significance of the practice identification and certification portions of the plan.

During September 1977, the committee drafted certain modifications to its proposed plan for "legal practice identification and specialization". However, no formal action or adoption of plan will be taken until there is resolution of restrictions on advertising and possible changes in the New York Code of Professional Responsibility as well as determination by appropriate judicial appellate divisions concerning the subject of advertising.

STATE	COMMITTEE	CHAIRMAN	STATUS
North Carolina (North Carolina Bar Assn.)	Joint Committee on Mandatory CLE, Specializa- tion and Certifi- cation	J. Mack Holland, Jr. P. O. Box 488 Gastonia, NC 28052 704/864-6751	*The joint committee has decided not to take any action on specialization and certification. It has also decided not to recommend mandatory continuing legal education. In lieu of mandatory CLE, the committee is expanding the availability of voluntary CLE programs.
North Dakota	None		
Ohio (Ohio State Bar Assn.)	Specialization Committee	Thomas A. Heydinger 101 West Columbus St. Bellefontaine, OH 43311 513/593-6065	The committee is studying the activities of other states.
Oklahoma (Oklahoma Bar Assn.)	Special Committee on Specialization and Recertification	James L. Hall, Jr. 1700 Liberty Tower Oklahoma City, OK 73102 405/232-0661	During its May '76 meeting the Oklahoma Bar Association House of Delegates tabled a proposed designation plan for the present. Under the plan, an attorney could designate up to three areas of law practice if the following "initial qualifications" were met. (1) engaged in the practice of law for at least five years, (2) substantial experience in each area during the three years immediately preceding application (25% of time spent in full time practice) or alternative criteria that might be established by the Board, (3) bar must be of opinion that attorney is qualified to practice in the designated area which opinion must be supported by affidavits of other bar members, and (4) agree to comply with CLE requirements necessary to extend designation qualifications or to request revocation of designation.
Oregon (Oregon State Bar)	Committee on Specialization	Owen M. Panner 1026 N.W. Bond St. Bend, OR 97701 503/382-3011	The right to designate continues for three years and the CLE requirement during that time is at least 25 hours of approved courses relating to each of the areas designated.
			*The Oregon State Bar, at its annual meeting in September 1977, voted to eliminate the program for certification of specialties. Eighteen sections were continued with members being permitted to join as many sections as they wished. The directory program of the Oregon State Bar was continued, authorizing listings of lawyers in a publication by the Oregon State Bar, furnishing detailed information to the public about lawyers, including areas of practice included and excluded. Detailed fee infor- mation is also permitted in the directories.

<u>STATE</u>	<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>STATUS</u>
Pennsylvania (Pennsylvania Bar Assn.)	Specialization Committee	Andrew Hourigan, Jr. 700 United Penn Bank Building Wilkes Barre, PA 18701 717/825-9401	Survey of membership has been completed and bar is now awaiting ABA evaluation of programs in operation.
Rhode Island (Rhode Island Bar Assn.)	Committee on Lawyer Speciali- zation	James M. Shannahan 732 Industrial Bank Building Providence, RI 02903 401/521-2900	*The committee expects the Rhode Island Supreme Court to ask for input by the Association on both the subjects of advertising and specialization and, therefore, wishes to have some sort of material ready when that request comes. The preliminary thinking is that the State of Rhode Island is too small to have any elaborate system of setting up standards for specialization and enforcement in review of such standards.
South Carolina (South Carolina Bar Assn.)	Specialization Committee	Lawrence M. Gressette, Jr. 203 Railroad Ave., N.W. St. Matthews, SC 29135 803/874-1430	*The pilot program on specialization that was submitted to the South Carolina Supreme Court on March 10, 1976 for approval has been withdrawn by the committee for revision. These have not been completed at this time. The committee is hopeful that a new proposal can be submitted to the House of Delegates at the annual meeting in May 1978.
South Dakota (State Bar of South Dakota)	Specialization Committee	Robert E. Morgan P.O. Box 436 Chamberlain, SD 57325 605/734-5151	Studying activities of other states.
Tennessee	Inactive		
Texas (State Bar of Texas)	Board of Legal Specialization	Phil Burleson 2001 Bryan Tower Suite 1717 Dallas, TX 75201 214/744-0755	*On January 29, 1977, the Board of Directors extended the pilot program until January 1, 1981. During that time the Texas Board of Legal Specialization has been directed to experiment with the implementation of more flexible standards so as not to otherwise exclude competent attorneys from participating in the program. At the same meeting the Board also approved "estate planning and probate" as the fourth specialty field without any "grandfather" clause.
			On May 26, the Board of Directors approved the fields of "personal injury trial law" and "civil trial law", established a nine member laypersons advisory commission, and changed the plan's designation from "specialist" to "board certified".

<u>STATE</u>	<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>STATUS</u>
Texas (continued)			It also authorized, subject to Supreme Court approval, the establishment of a review commission for each specialty field. The purpose is to give the program flexibility. The review commissions may recommend that an applicant has the equivalent of a particular standard and that he or she should be certified even though he or she does not technically meet that standard.
Utah (Utah State Bar)	Committee on Specialization	Stephen H. Anderson 400 Deseret Bldg. Salt Lake City, UT 84111 801/532-1500	*The Utah Committee on Specialization is now actively considering definitive recommendations to be made to the Board of Utah Bar Commissioners prior to the annual meeting in July 1978. Recently adopted rules on advertising in Utah permit self-designation without restrictions in the telephone directory. The Specialization Committee is considering recommendations to impose restrictions on that rule.
Vermont (Vermont Bar Assn.)	Availability of Legal Services Subcommittee on Specialization	John C. Gravel P. O. Box 1049 Burlington, VT 05402 802/658-0220	Studying the activities of other states and the ABA Standing Committee on Specialization "discussion draft" of an Interim Report. Results of a 1975 survey favored some form of specialization two to one. The committee now is considering some type of bar referral program coordinated with designation/specialization and lawyer advertising programs.
Virginia (Virginia State Bar)	Specialization Committee	F. Rodney Fitzpatrick Shenandoah Building Roanoke, VA 24011 703/982-2811	*The Council of the Virginia State Bar adopted a resolution approving the concept of designation and certification of specialties by Virginia lawyers. The Committee was directed to prepare a proposed designation plan for consideration by the Council and the members of the Virginia State Bar and to continue to study and outline the necessary steps and procedures to achieve the goal of certification of specialists. The Committee is continuing to work on a proposed plan and expects to complete its assignment during the spring of 1978.
Washington (Washington State Bar Assn.)	Board of Legal Specialization	Donald A. Cable 3000 Sea-First Bldg. Seattle, WA 98154 206/682-3333	*A plan and implementing rules and regulations were approved by the Board of Governors of the Washington State Bar Association in August 1976. The plan, rules and regulations have been submitted to the Supreme Court of the State of Washington for its approval.

<u>STATE</u>	<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>STATUS</u>
Washington (continued)			<p>A required period of law practice, substantial involvement (i.e., actual performance), and an examination will be required to qualify in fields of practice covered. Any section of the association or group of lawyers may petition to have a specialty area included in the plan although the Board of Governors has encouraged recognition in the following areas: Taxation, Workmen's Compensation, Admiralty, Labor and Patents and Trademarks. At the present time, criminal law, family law and the taxation sections have petitioned for recognition. No action will be taken on those petitions until the Washington State Supreme Court approves the plan.</p>
Washington, DC (District of Columbia Bar)			
West Virginia	Executive Committee	Robert J. Wallace 11 North Kanawaha St. Buckhannon, WV 26201 304/472-4700	Investigatory stage.
Wisconsin (State Bar of Wisconsin)	Committee on Specialization	Elwin A. Andrus 735 North Water St. Milwaukee, WI 53202 414/271-7590	*The Supreme Court issued an order on December 23 effective for one year permitting any lawyer to advertise his availability to render legal services. There were no restrictions or guidelines. The Committee on Specialization now has the duty of monitoring this program.
Wyoming (Wyoming State Bar)	Committee on Specialization	Jack Van Baalen P.O. Box 3035 University Station Laramie, WY 82071	*The Wyoming Board of Bar Commissioners appointed the Committee on Specialization at a meeting on January 15, 1978.

APPENDIX E

Proposed Plans of the Law Society of Upper Canada

The first Ontario response to perceived pressures for specialization resulted in a proposal by the Law Society Special Committee on Specialization (the "Committee")* based on the California model. The initial fields of specialty proposed were criminal law, bankruptcy, admiralty, and labour law. The emphasis on areas of federal jurisdiction was designed to facilitate the development of specialization in several provinces simultaneously.

The Committee suggested that specialization should follow a period of practical experience and concentration in the areas selected. Accordingly, to obtain a specialist's certificate, an applicant would have to prove five years of substantial devotion to a specialty and then pass approved courses given at law schools and the Bar Admission Course facilities. To maintain the title, specialists would be required to attend and pass examinations in prescribed courses. However, the Committee rejected re-certification or compulsory periodic re-examination of initial entry courses. In the first two years of the program, the Law Society was prepared to recognize "grandfather" certification, without formal examination of those who had been in practice ten years and had substantially devoted themselves to practise in the field of specialty. Multiple specialties, to a maximum of three areas, would have been permitted. Certified specialists would then have been allowed to identify their

* Report of the Special Committee on Specialization, November 9, 1972.

specialty on professional cards, letterheads, professional signs, telephone directories and other approved publications.

Throughout the report, the Committee emphasized the "crucial importance that the general practitioner remain both numerically and influentially the dominant factor in the profession." Several steps were taken to avoid endangering the future of the generalist. The training of the specialist must be additional to general training. General practitioners could practise in all fields including those in which specialist qualifications exist. Likewise, specialists could continue in general practice outside their specialty. Lastly, the Committee anticipated changes to the rules of professional conduct to prevent a specialist from expanding his relationship with a client beyond the scope of his specialty when the client had been referred to him by a generalist. Whatever impact specialization would have on raising the standard of care expected from experts practising their specialties would be left to evolve through the Courts.

As a result of opposition by the legal profession, this proposal was shelved. A resurgence of interest in specialization led to the development of the "Accreditation Proposal" in the report of the Specialization Committee of 20 January 1977.

The Committee stated that there was a negative reaction by the profession to its 1972 recommendation of a plan to certify true specialists and that this attitude had not changed. However, in recognizing the demand "to provide a way for members of the public

to be able to select a lawyer who is ready and able to handle their particular problems", the Committee recommended a scheme for "accrediting" lawyers in various fields and permitting them to inform the public through the yellow pages of the telephone book, their professional cards and letterheads, of the areas in which they practise. The Committee tried to emphasize the distinction between accreditation and true specialization by arguing that the latter represents an exceptionally high standard of legal expertness through a combination of intensive experience and outstanding ability in a narrow field of law, whereas the former signifies competence only in broader areas of law. The Committee emphasized the importance of keeping the distinction clear in the minds of the public.

The "Accreditation Proposal" contained in the Report of the Special Committee on Specialization* and adopted in principle by Convocation was circulated to members of the legal profession. The County and District Law Associations were asked to canvas their members and to be prepared to consider the issue at their next meeting with the Law Society. As a result of that meeting** with the County and District Law Association presidents and secretaries, it was concluded that on balance the profession had rejected the accreditational proposal as unnecessary in smaller centres and inadequate for specialized groups such as the Criminal Lawyers Association.

* January 20, 1977.

** November, 1977.

APPENDIX F

LAW SOCIETY OF UPPER CANADA

Report
of the Special Committee on
Professional Competence*

* This Report was adopted in principle by Convocation on June 16, 1978.

REPORT OF THE SPECIAL COMMITTEE ON PROFESSIONAL COMPETENCE

Possibly no aspect of the practice of law or for that matter of other professions such as medicine and accounting is of more immediate importance or raises more difficult questions than that of maintaining the competence of the practitioner. If this is not effectively accomplished, the public suffers and the profession will fall into disrepute. The problem is only to a lesser degree one of the lazy, careless, or even stupid lawyer. The major problem is that of keeping abreast of the proliferation of statutes and regulations from all levels of government and the directives, bulletins, and memoranda which are put out to explain the new and changed law, of following the increasing flow of jurisprudence in a multiplying range of reporting services and of attempting to keep in touch with the wealth of textbooks, reviews, and periodicals analyzing and digesting this mass of material. Both the burden that this places on the practitioner and the obligation to give the client the best service possible, require that the Law Society play a positive part in assisting and encouraging its members to maintain their competence. The continuing legal education program as it now operates goes a long way toward fulfilling this purpose. The seminars, lectures, and courses and the publications which the Legal Education Centre sponsors and publishes are valuable to those who take advantage of them. The next step which your Committee considers should be taken is to stimulate a larger participation by the Bar in continuing legal education opportunities on a programmed but still voluntary basis.

With this purpose in mind, your Committee proposes that lawyers who are prepared to conform to conditions laid down by the Society be permitted if they so desire to publicize areas of law in which they practise. This would be done by suitable announcements in newspapers and periodicals as well as in the usual legal directories and by listings in telephone directories under appropriate subheadings. The details of this part of the proposal and its application to firms could be worked out by the Special Committee on Advertising. The announcement would take the form of a simple statement, viz.

John Smith, LL.B.
Barrister and Solicitor
Real Estate & Debtor and Creditor Rights

Words such as "specializing in," "practising in," "accredited in;" and of similar import which imply a holding out or representation by the Society would not be allowed and the custom of announcing that "practice is restricted" to a particular field of law would be discontinued.

Permission to announce an interest in a particular area of law would be granted in the first instance upon the practitioner simply filing a statement, on a form provided by the Society, to the effect that the practitioner was knowledgeable in that area and was presently devoting or intended to devote an appreciable part of the practice to service to clients in that area.

Your Committee recognizes that this is a very low threshold to recognition as a practitioner in an area of law but is satisfied on balance that there is no alternative if any proposal of the nature put forward in this report is to become operative. On reflection it becomes apparent that the imposition of conditions such as to have been engaged in a field of law to a stipulated degree or for a particular length of time would result in inequitable treatment among practitioners unless supported by cumbersome tests or formulae. These in turn would lead to endless argument and dispute in attempts to monitor and enforce them even if they could be formulated. Your Committee is of the opinion that the risk of a few taking advantage of a privilege to which they are not entitled would be more than offset by the desirability of positive action in a desirable direction.

In order to continue to enjoy the privilege of publicizing areas of practice, practitioners would be required at least annually to confirm in writing to the Society that they continue to be engaged in the specified area of practice and that they had attended such lectures or seminars as had been available in that area and were prescribed or approved by the Supervising Committee. The Supervising Committee would be a committee with province-wide membership composed of practitioners with acknowledged standing in the particular area of law who would not necessarily be benchers. These committees would be constituted for the areas of practice or possibly for several related areas, recognized by the Law Society. They would be responsible to the Society through the Legal Education Committee either as presently constituted or as reorganized. Their function would be to monitor developments in the areas of law assigned to them, to arrange and prescribe courses of study and seminars, and to prepare instructional material with information regarding changes and developments in the law for the distribution to those who identified themselves as practising in the area.

RECOMMENDATION I

Your Committee recommends that a lawyer be permitted, if he so wishes, to publicize areas of law in which he wishes to practise, subject to the following restrictions, which may be amended from time to time —

- (a) the area of practice be limited to the areas of practice as established by a committee of Benchers,
- (b) the lawyer, before such publication, shall register with the Law Society, and shall not proceed with such publication until his application has been approved,
- (c) the lawyer before such publication must join the group established by the responsible committee and shall maintain his membership therein so long as such publicity continues,
- (d) that a fee be charged.

RECOMMENDATION II

Your Committee further recommends that the responsible committee of Benchers establish a committee for each preferred area of practice and that each of these committees establish standards for membership in the area but particular emphasis being given to —

- (a) periodical seminars, including lectures and group instruction,
- (b) up-to-date mailing of changes in Statutes, case law, articles, etc. so that a member can keep apprised of that particular area of law.

The proposal to permit the publicizing of the preferred areas of practice rests on the assumption that economic self-interest will induce practitioners who register to take the necessary steps to continue to enjoy the resulting benefits. If and when the program becomes fully operative, it would impose a substantial additional burden on the responsibilities of the Legal Education Centre and additional staff would be required to handle the administrative features of the operation and prepare the educational material. Your Committee, therefore, feels that it would be in order to charge a fee on the filing of the statements that would be required from time to time.

Your Committee recognizes that cases might arise in which it would become necessary to take disciplinary action against practitioners who publicize their professional interests without filing the requisite statements or attending prescribed lectures or seminars. Both these matters can be monitored with relatively little difficulty.

There is another aspect to the problem of professional competence which should receive attention. This is the matter of the practitioner who conducts his practice with a degree of carelessness or ignorance that goes beyond reasonable limits. A program of voluntary improvement would not meet the exigencies of situations such as these and the possibility of taking disciplinary action against such practitioners should not be excluded. Your Committee does not consider, however, that action by way of disciplinary complaint will have other than a very indeterminable effect on the general level of competence within the profession whatever it might achieve in the particular case.

Another aspect of incompetence is lack of efficient office organization and sloppy business practices resulting in delays, missed filing dates, and failure to communicate adequately with the client, and so on. These are the predominant causes of complaints against lawyers and your Committee feels that the Society would be remiss if it did not make an effort to assist in correcting deficiencies of this nature. In this regard, your Committee has had the opportunity to consider a memorandum prepared by the Society's accountant, Mr. Anderson, putting forward a scheme for a Practice Advisory Service. Mr. Anderson's proposal is that the Society would offer a free, confidential educational service on the request of practitioners who found themselves in difficulties. This service would be provided by a member of the Society's staff who had practical law office experience and training in or a strong aptitude for systems work. Advice and suggestions would be given in connection with all aspects of the legal practice. If, as a result of an inspection of a practitioner's office, either by invitation or a result of complaints from clients, it were found that the practitioner's conduct involved fraud or dishonesty or delinquency such as to require stronger measures, the situation would be referred to the Discipline Committee. It would be hoped, however, that because delivery of the advisory service would be confidential and in the first instance without ties to either the discipline or professional conduct side of the Society's activities it would be called on freely by practitioners who found themselves in difficulties for one reason

or another. Your Committee feels that a service of this nature has many valuable features.

RECOMMENDATION III

That the Law Society establish a Practice Advisory Service for all members of the Society along the lines outlined above.

“Stuart Thom
pro Chairman”

16th June, 1978

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Attachments

Survey of Legal Firms in the Province of Ontario

Survey of Legal Personnel

Client Survey - Business

Client Survey - Individual



PROFESSIONAL ORGANIZATIONS COMMITTEE
MINISTRY OF THE ATTORNEY GENERAL

SURVEY OF LEGAL FIRMS IN THE PROVINCE OF ONTARIO

INSTRUCTIONS FOR COMPLETING THE QUESTIONNAIRE:

1. It is important that each question be answered unless otherwise specified in the instructions to the question. Some of the information requested may not be immediately available to you. Where your firm cannot obtain this information from records or directly from personnel, please provide your best estimate.
2. The questionnaire was designed to be completed by the firm's principal or head office. If the questionnaire has been received in error by a branch office, please do **not** respond. A duplicate questionnaire has been sent to the head office.
3. For the purposes of this questionnaire, please use the following definitions:
 - A. SENIOR LAWYERS Individuals who were called to the bar in a province of Canada more than 5 years ago.
 - B. JUNIOR LAWYERS Individuals who were called to the bar in a province of Canada 5 or fewer years ago.
 - C. ARTICLING STUDENTS Full-time employees who have completed law school but who have not been called to the bar.
 - D. LEGAL SECRETARIES Employees who perform routine legal tasks in addition to secretarial functions.
 - E. PARA-PROFESSIONALS Employees who perform routine legal tasks but who are **not** lawyers, who are **not** students and who do **not** ordinarily perform secretarial work.

INSTRUCTIONS FOR RETURNING THE QUESTIONNAIRE:

Upon completing the questionnaire, insert it in the white Business Reply Envelope and post. Do not enclose the coloured business reply card with the questionnaire. MAIL IT SEPARATELY.

This procedure preserves the anonymity of your response while at the same time indicating that you have returned your questionnaire. In this way, reminders will be directed only to those who have not replied.

SECTION I GENERAL INFORMATION

I.1 In what **county or district** is your firm's office located? _____ (Indicate the main office location if there is more than one office).

I.2 What is the population of the **city or town** in which this office is located? (check one)

- | | | |
|-------|-------------------|--------------------------|
| (i) | Less than 5,000 | <input type="checkbox"/> |
| (ii) | 5,000 — 30,000 | <input type="checkbox"/> |
| (iii) | 30,001 — 100,000 | <input type="checkbox"/> |
| (iv) | 100,001 — 500,000 | <input type="checkbox"/> |
| (v) | 500,001 or more | <input type="checkbox"/> |

I.3 (a) Which one of the following categories applies to your firm? (check one)

- | | | |
|------|---------------------|--------------------------|
| (i) | Sole Proprietorship | <input type="checkbox"/> |
| (ii) | Partnership | <input type="checkbox"/> |

(b) If your firm is a partnership, please state the number of partners on January 1, 1977: _____

- I.4 Please enter the number of individuals in the firm (using the definitions given in the instructions). Please use the beginning of the year as a point of reference. Do **not** list any individual in more than one category. If your firm was established after 1973, enter zero's in the table for previous years.

	1973	1974	1975	1976	1977
Lawyers*					
Articling students					
Para-Professionals					
Legal Secretaries					
Others.					
*including partners					
TOTAL					

SECTION II PROFESSIONAL MANPOWER

- II.1 Please state the **number of senior and junior lawyers in the firm** (using the definitions given in the instructions). Use the beginning of the year as a point of reference. Include partners in the count of lawyers.

	<u>1973</u>	<u>1977</u>
Senior lawyers in the firm in:	_____	_____
Junior lawyers in the firm in:	_____	_____

- II.2 Please state the number of lawyers in the firm on January 1, 1977 who were first called to the bar in:

	<u>Number</u>
(i) Ontario	_____
(ii) Other provinces of Canada	_____
(iii) United Kingdom	_____
(iv) United States	_____
(v) Other countries	_____

- II.3 Within the past four year period, (January 1, 1973 — January 1, 1977) how many lawyers have:

(a) joined your firm from:	<u>Number</u>
(i) another law firm or independent practice	_____
(ii) private business or industry	_____
(iii) government	_____
(iv) university law faculty	_____
(v) graduation from the bar admission course	_____
(b) left your firm for:	
(i) another law firm or independent practice	_____
(ii) private business or industry	_____
(iii) government	_____
(iv) university law faculty	_____
(v) retirement, death, other	_____

- II.4 Of the junior lawyers who were with your firm on January 1, 1973, how many:

left before January 1, 1975	_____
left after January 1, 1975	_____
are still with your firm	_____

- II.5 How many lawyers in your firm (on January 1, 1977):

(a) hold advanced degrees in law	_____
(b) participated in formal continuing education in 1976	_____

- II.6 The list below separates legal services into various categories. Complete the first column by entering the number of Lawyers who spend more than 50% of their billable time in a particular category. For the lawyers entered in the first column, also state the number who hold advanced degrees in law and the number who participated in formal continuing education in 1976.

Legal Services	Lawyers spending more than 50% of their billable time	Holding advanced Degrees in Law	Participating in Formal Continuing Education
1. Civil Litigation			
2. Criminal Litigation			
3. Corporate and Commercial			
4. Real Estate Transactions			
5. Tax			
6. Wills and Administration of Estates			
7. Family			
8. Administrative			
9. Labour Relations			
10. Industrial and Intellectual Property			
11. Admiralty			
12. Other (please specify):			

SECTION III NON-PROFESSIONAL MANPOWER

- III.1 Of the individuals in the categories below who were with your firm on January 1, 1973, how many:

	Left before Jan. 1, 1975	Left after Jan. 1, 1975	Are still with your firm
(a) Legal Secretaries	_____	_____	_____
(b) Para-Professionals	_____	_____	_____

- III.2 Of the legal secretaries and para-professionals currently with your firm, how many:

	Legal Secretaries	Para-professionals
(a) Received formal training in legal work at the post-secondary level	_____	_____
(b) Received a certificate or diploma on completion of formal training	_____	_____
(c) Are certified by their respective associations	_____	_____

- III.3 If your firm employs articling students, please indicate for the four year period January 1, 1973 – January 1, 1977:

(a) What percentage of articling students left the firm before completing the articling period?	_____ %
(b) What percentage of students who articulated with your firm were rehired as junior lawyers?	_____ %

- III.4 Please indicate the relative importance attached by your firm to the reasons given below for hiring articling students. (Circle the description you consider most accurate)

	very important			not important
(a) The firm has a feeling of responsibility to legal education as members of the Law Society	1	2	3	4
(b) Students are a financially viable source of assistance to the firm	1	2	3	4
(c) Hiring students provides the firm with a useful means of evaluating potential employees	1	2	3	4
(d) Other (please specify) _____	1	2	3	4

SECTION IV**PROFESSIONAL SERVICES**

IV.1 Approximately what percentage of the firm's total billable time in 1976 was derived from each category of legal services listed below:

- | | |
|--|-------------|
| 1. Civil Litigation | _____ |
| 2. Criminal Litigation | _____ |
| 3. Corporate and Commercial | _____ |
| 4. Real Estate Transactions | _____ |
| 5. Tax | _____ |
| 6. Wills and Administration of Estates | _____ |
| 7. Family | _____ |
| 8. Administrative | _____ |
| 9. Labour Relations | _____ |
| 10. Industrial and Intellectual Property | _____ |
| 11. Admiralty | _____ |
| 12. Other (please specify if more than 10% of total billable time) | _____ |
| (i) _____ | _____ |
| (ii) _____ | _____ |
| | <u>100%</u> |

IV.2 In which of the categories of legal services listed below does your firm customarily refer matters to lawyers outside the firm who specialize? (check the appropriate category(ies))

- | | |
|--|-------|
| 1. Civil Litigation | _____ |
| 2. Criminal Litigation | _____ |
| 3. Corporate and Commercial | _____ |
| 4. Real estate transactions | _____ |
| 5. Tax | _____ |
| 6. Wills and administration of estates | _____ |
| 7. Family | _____ |
| 8. Administrative | _____ |
| 9. Labour relations | _____ |
| 10. Industrial and intellectual property | _____ |
| 11. Admiralty | _____ |
| 12. Other (please specify) | _____ |
| (i) _____ | _____ |
| (ii) _____ | _____ |
| (iii) _____ | _____ |

IV.3 Consider all the clients served by your firm in 1976. Approximately what percentage were located in:
(For corporate clients, use the head office location in Ontario).

- | | |
|---|-------------|
| 1. Your own county or district (if not Metro Toronto) | _____ |
| 2. Metro Toronto | _____ |
| 3. Rest of Ontario | _____ |
| 4. Outside Ontario | _____ |
| | <u>100%</u> |

IV.4 Approximately what percentage were:

- | | |
|--|-------------|
| 1. Public corporations | _____ |
| 2. Non-public corporations and unincorporated businesses
(Include sole proprietorships and partnerships). | _____ |
| 3. Legal aid recipients | _____ |
| 4. Other individual clients | _____ |
| 5. Government and non-profit institutions | _____ |
| 6. Other (please specify) _____ | _____ |
| | <u>100%</u> |

IV.5 Approximately what percentage of your firm's total billable hours in 1976 were accounted for by your ten (10) most important clients? (Where "important" is defined in terms of time billed)

_____ %

SECTION V TARIFFS, FEES AND SALARIES

V.1 For the categories of legal services listed below, please state, for the year 1976, the approximate percentage of work in each category for which billings were computed at the rate established by the tariff schedules. For example, if 50% of the real estate transactions executed by your firm are billed at established tariff schedules, enter 50 in the appropriate column opposite category 'Real Estate Transactions'.

Category	Percentage of billings in this category at established tariff schedules	
	Law Association Tariff	Other Tariff Schedules
1. Civil Litigation	_____	_____
2. Criminal Litigation	_____	_____
3. Real estate transactions	_____	_____
4. Wills & administration of estates	_____	_____
5. Family law	_____	_____
6. Corporate	_____	_____
7. Commercial	_____	_____

V.2 What is the average hourly rate at which your firm's clients are charged by each category listed below:

Category	Average Hourly Rate
1. Lawyers with more than ten years experience	_____
2. Lawyers with 6-10 years experience	_____
3. Lawyers with less than six years experience	_____
4. Articling students	_____

V.3 Please enter the average hourly rate of those lawyers in your firm who spend more than 50% of their billable time in one of the categories listed below.

	Lawyers with:		
	More than 10 years experience	6 to 10 years experience	Less than 6 years experience
1. Civil Litigation	_____	_____	_____
2. Criminal Litigation	_____	_____	_____
3. Corporate and Commercial	_____	_____	_____
4. Real Estate Transactions	_____	_____	_____
5. Tax	_____	_____	_____
6. Wills and Administration of Estates	_____	_____	_____
7. Family	_____	_____	_____
8. Administrative	_____	_____	_____
9. Labour Relations	_____	_____	_____
10. Industrial and Intellectual property	_____	_____	_____
11. Admiralty	_____	_____	_____
12. Other (please specify)	_____	_____	_____
(i) _____	_____	_____	_____
(ii) _____	_____	_____	_____

V.4 What is the current average starting salary paid by your firm to a:

	Dollars per year
1. Junior lawyer	_____
2. Articling Student	_____
3. Legal Secretary (if hired as a legal secretary)	_____
4. Para-professional (if hired as a para-professional)	_____

V.5 What is the current average salary paid by your firm to a:

	Dollars per year
1. Junior lawyer five years after admission to the Bar	_____
2. Legal Secretary five years after joining your firm	_____
3. Para-professional five years after joining your firm	_____

THANK YOU VERY MUCH FOR YOUR CO-OPERATION!

PROFESSIONAL ORGANIZATIONS COMMITTEE

MINISTRY OF THE ATTORNEY GENERAL

SURVEY OF LEGAL PERSONNEL

PLEASE COMPLETE ALL QUESTIONS IN SECTIONS I,II,AND III. SECTION IV IS AVAILABLE FOR ANY COMMENTS THAT YOU MAY WISH TO MAKE.

UPON COMPLETING THE QUESTIONNAIRE, PLACE IT IN THE ENCLOSED BUSINESS REPLY ENVELOPE AND MAIL IT BACK.

SECTION I

1. Year of Birth 19__	2. Sex M _ F _	3. Country of Birth _____	4. If foreign born, year immigrated to Canada: 19__
--------------------------	-------------------	------------------------------	---

5. Education	Name & Location	Years Attended	Year Graduated	Degree or Diploma	Subjects Taken
High School					
College or University					
Other Courses or Schools					

6. Membership in Associations	<input type="checkbox"/> Institute of Law Clerks	Rank _____
	<input type="checkbox"/> Metro Toronto Legal Secretaries Assn.	Assoc., Affil., Fellow

7. Past Employment (list most recent employment first)		
From	Title or Position	Final Salary
		\$ _____ /year
To	Duties	
From	Title or Position	Final Salary
		\$ _____ /year
To	Duties	
From	Title or Position	Final Salary
		\$ _____ /year
To	Duties	

8. Present Employment			<input type="checkbox"/> Full-time	<input type="checkbox"/> Part-time	<input type="checkbox"/> Not Employed
From (date)	Location of Office (County)		Type of Organization (eg. law firm)		
Number of Lawyers		Number of Other Staff		My Title or Position	
Hours worked/week		Duties			
Starting Salary		Current Salary		Special Equipment Operated	
\$ /year		\$ /year			

9. Please check the area(s) of law in which your present employer is actively engaged.

<input type="checkbox"/> Civil Litigation	<input type="checkbox"/> Wills & Administration of Estates
<input type="checkbox"/> Criminal Litigation	<input type="checkbox"/> Family
<input type="checkbox"/> Corporate & Commercial	<input type="checkbox"/> Administrative
<input type="checkbox"/> Real Estate	<input type="checkbox"/> Labour Relations
<input type="checkbox"/> Tax	<input type="checkbox"/> Admiralty
<input type="checkbox"/> Industrial & Intellectual Property	<input type="checkbox"/> Other (please specify) _____

10. What percentage of your work is assigned by a lawyer(s)? _____ %

What percentage of your work is not assigned by a lawyer(s) but rather comes to you directly? _____ %

11. How many different lawyers assign work to you? _____
(number)

12. Does your employer itemize your services on the clients' bills ?

☐ YES ☐ NO ☐ DON'T KNOW

13. Is your billing rate indicated on clients' bills ?

☐ YES ☐ NO ☐ DON'T KNOW

[illegible]

SECTION III

PLEASE CIRCLE THE NUMBER OPPOSITE EACH STATEMENT BELOW THAT MOST CLOSELY CORRESPONDS TO YOUR FEELINGS ABOUT THE STATEMENT. THERE ARE NO RIGHT OR WRONG ANSWERS SO FEEL FREE TO REGISTER YOUR OPINION. PLEASE LEAVE NO STATEMENTS BLANK.

	STRONGLY AGREE				STRONGLY DISAGREE
1. Legal secretaries and law clerks are treated as equals.	1	2	3	4	5
2. Regular supervision by a lawyer is a necessary part of my job.	1	2	3	4	5
3. Practical experience is more useful than taking courses.	1	2	3	4	5
4. Only those who have been carefully trained can do the work I do.	1	2	3	4	5
5. I would like to have my own business someday.	1	2	3	4	5
6. Membership in an association of legal personnel is important to to my career.	1	2	3	4	5
7. I often think of trying different kinds of jobs.	1	2	3	4	5
8. My employer treats me as a para-professional.	1	2	3	4	5
9. Only those meeting certain standards should be hired for positions like mine.	1	2	3	4	5
10. My main role is helping lawyers work more effectively.	1	2	3	4	5
11. Legal secretaries and law clerks do very different work.	1	2	3	4	5
12. My work is a career not just a job.	1	2	3	4	5
13. Formal courses do not teach any useful job skills	1	2	3	4	5

SECTION IV

IN THIS SECTION WE WOULD LIKE YOU TO GIVE US YOUR COMMENTS ON:
(Please use an additional sheet of paper, if necessary, to elaborate).

- A. The differences you see in the capabilities of law clerks and legal secretaries.
- B. The value to you of courses and formal training (in community colleges or elsewhere) to the work you are currently doing.
- C. The best role for associations such as The Institute of Law Clerks and/or The Metro Toronto Legal Secretaries Association.
- D. The role that legal secretaries and/or law clerks should play in the legal system.

CLIENT SURVEY - BUSINESS

1. Do you have your own legal department? Yes _____ NO _____
If yes, please go on to answer Part A. If no, go on to Part B.

PART A

1. Why does your business have its own legal department?

2. Have you hired outside legal counsel in the past three years?
Yes _____ No _____
If no, go to Part C. If yes, continue in answering the questionnaire.
3. How frequently would you hire outside legal counsel?
(a) on retainer _____
(b) more than twice a year _____
(c) once or twice a year _____
(d) once in three years _____

PART B

1. Do you contact the same legal firm to deal with all your legal problems? Yes _____ NO _____
2. If not, on what basis do you allocate the case or problem?

3. In selecting a lawyer, people often have in mind the names of more than one lawyer who is capable of performing the task. In choosing a lawyer, did you have in mind more than one name? Yes _____ No _____
If yes, please answer questions 4.1-4.3. If no, please answer question 4.5

4.1 In searching for a lawyer or law firm to work on your behalf, how did you determine which were available as possible alternatives? Please place a check beside the appropriate answer.

- (a) Colleagues (business associates) _____
- (b) Other legal firms _____
- (c) Own legal department _____
- (d) Friends _____
- (e) Legal Referral Service _____
- (f) Other (please specify) _____

4.2 Are these the same sources you would use in evaluating the various firms? Yes _____ No _____

If no, please specify which sources would be used in evaluating the firms you are considering? _____

4.3 Did you contact the firms themselves before choosing one?

Yes _____ No _____

If yes, what types of information did you ask for? Please place a check beside the appropriate answer(s).

- (a) Fees (prices) charged _____
- (b) Specialization _____
- (c) Location _____
- (d) Availability _____
- (e) Other (please specify) _____

4.4 Were the answers to your questions satisfactory? Yes _____ No _____

If no, why not? _____

4.5 In selecting a lawyer or law firm, were there reasons for not looking at more than one firm? Yes _____ No _____

If yes, what were these reasons? _____

5. In selecting a law firm to deal with a specific problem, how important are each of the following in your choice of lawyer or law firm.

	Very Impt.	Impt.	Unimp.	Quite Unimp.	Not con- sidered
Established Reputation					
Fees charged					
Size of firm					
Range of Services					
Location-ease of access					
Specific lawyer works there					
Other clients use the firm					
Communicates well with in-house legal department					
References from others					
Others (please specify)					

6. At what point in your decision making would you discuss fees?
Please check beside the appropriate answer.

- (a) in preliminary talks with a number of firms _____
- (b) after a firm has been selected but before the
actual work has been undertaken _____
- (c) after being billed _____
- (d) never _____

If your answer was 6(a) or (b), please answer question 6.1.

If your answer was 6(c) or (d), please answer question 6.2.

6.1 Did you negotiate over the fees to be charged? Yes _____ No _____
If yes, please describe the negotiation process.

6.2 Did you have any idea of what the fees would be? Yes _____ No _____
Why did you choose not to negotiate? _____

7. Do you know how the fees to be charged were determined?

- (a) Tariff (percentage) _____
- (b) Hourly rate _____
- (c) Other (please specify) _____
- (d) Don't know _____

8. How do you determine if the fees charged were fair?

9. Have you ever been overcharged? Yes _____ No _____
If no, please go on to question 10. If yes, please continue
and answer questions 9.2 and 9.3.

9.1 Did you raise the matter with your lawyer? Yes _____ No _____

9.2 Were you satisfied with the resolution of that complaint or did
you take further action?

- (a) Satisfied _____
- (b) Satisfied but took further action _____
- (c) Dissatisfied and took no further action _____
- (d) Dissatisfied and took further action _____

If you did take further action, what proceedings did you undertake?

If you did take further action were you satisfied with the
resolution of the problem? Yes _____ No _____

If not, why not? _____

10. If you had a complaint about the fees, what are the possible courses of action which you could take?

11. Do you feel that you receive good value from lawyers in relation to money spent? Yes _____ No _____

12. Are the fees charged

(a) higher than expected _____
(b) lower than expected _____
(c) what you expect fees to be _____

13. Are the bills from your lawyer(s)

(a) too detailed _____
(b) satisfactory _____
(c) insufficiently detailed _____
(d) don't know _____

14. Are you satisfied with the quality of services you receive from your lawyer?

(a) very satisfied _____
(b) satisfied _____
(c) dissatisfied _____
(d) don't know _____

15. Have you ever had any complaints about the quality of legal services received? Yes _____ No _____

If no, please go on to question 16. If yes, please answer the following questions.

15.1 If yes, what was the nature of the complaint? _____

15.2 What did you do about the complaint?

- (a) Law Society of Upper Canada _____
(b) Saw another lawyer _____
(c) Nothing _____
(d) Other (please specify) _____

15.3 Were you satisfied with the resolution of the complaint?

Yes _____ No _____

If not, why not _____

16. If you did have a complaint about the quality of services you had received from your lawyer, what are the possible courses of action you could take? _____

17. Do you feel that your lawyer spent

- (a) enough time on your case _____
(b) not enough time on your case _____
(c) don't know _____

17.1 Do you think that your lawyer

(a) communicated the progress in your case
in language which was easily understood _____

(b) communicated the progress in your case
in legal language which was difficult to
understand _____

(c) communicated the progress in your case in
language which was partially understandable _____

(d) Other (please specify) _____

17.2 Do you think that your lawyer

(a) communicated the progress of your case promptly _____

(b) was slow in communicating the progress of your case _____

(c) don't know _____

18. Would you be in favour of more information being available about
lawyers? Yes _____ No _____

If no, please go on to question 19. If yes, please answer
question 19.1

18.1 What types of information would you like made more available?

(e.g. Fees charged, qualifications, area of specialization, etc.)

18.2 What sources of information would you like to see used to

disseminate the information? (e.g. trade journals, advertising, etc.)

19. In the past five years, have you had occasion to change law firms or lawyers? Yes _____ No _____

If no, please proceed to PART C. If yes, please answer the following questions.

19.1 What were the reasons for changing lawyers or law firm? Place a check beside the appropriate answer(s).

- (a) Nature of your business changed _____
- (b) Nature of problem changed _____
- (c) Dissatisfaction with prices charged _____
- (d) Dissatisfaction with services _____
- (e) Lawyer moved or died _____
- (f) Business moved _____
- (g) Other (please specify) _____

19.2 Did you have any problems in changing from one law firm or lawyer to another? Yes _____ No _____

If yes, what was the nature of the problem?

- (a) Transferring records _____
- (b) Familiarizing the new lawyer with the business _____
- (c) Other (Please specify) _____

PART C

1. Business often employs persons who are not lawyers to do work that lawyers normally perform. Do you have any such employees?

Yes _____ No _____

If no, please go on to question 2. If yes, please proceed with question 1.1.

1.1 How many persons would you employ in performing such work? _____

1.2 Where were these people recruited? Please check the appropriate answer(s).

(a) Community College _____

(b) Law Clerks _____

(c) Retired Bank Managers _____

(d) Other (Please specify) _____

1.3 What is their training? _____

1.4 Do you feel that the job is done as competently, not as competently or better than a lawyer would do? _____

2. Law firms often employ non-lawyers to deal with certain aspects of the law. They have training in specific areas of the law and are called para-professionals. Law firms may also employ articling students. Have you been aware of the use of paraprofessionals when a lawyer has worked on your behalf. Yes _____ No _____
Have you been aware of the use of articling students in your dealings with your lawyer? Yes _____ No _____

2.1 If yes, could you list the types of tasks performed by each?

2.2 Were you aware of any price adjustments being made for the use of an articling student or paraprofessional? Yes _____ No _____

2.3 Do you feel that there was adequate supervision in the use of articling students or paraprofessionals. Yes _____ No _____

PART D

Please feel free to use the following space to add any comments you wish.

THANK-YOU FOR YOUR COOPERATION.

CLIENT SURVEY - INDIVIDUAL

1. Have you ever used the services of a lawyer? Yes _____ No _____
If no, go on to Part D. If yes, when was the last occasion?
- _____

- 1.1 What was the nature of the matter? Please check beside the appropriate answer(s).

(a) civil litigation (court case) _____
(b) real estate _____
(c) divorce _____
(d) criminal _____
(e) other (please specify) _____

- 1.2 How frequently have you used the services of a lawyer in the past five years? Please check the appropriate answer.

(a) more than twice a year _____
(b) once or twice a year _____
(c) once or twice in five years _____
(d) other (please specify) _____

2. Did you look for a lawyer who worked mainly in a field related to your problem? Yes _____ No _____

If no, did you think that any lawyer would have done the job competently?
Yes _____ No _____

3. In selecting a lawyer or law firm, did you have any of the following information. Please check beside those statements which were true of your selection of a lawyer.

(a) information about lawyers who were experts
in dealing with problems similar to yours _____
(b) information about fees (price) _____
(c) information about personal attributes of
lawyer (friendly, understanding, etc.) _____
(d) names of lawyers located close to
your home _____
(e) other (please specify) _____

3.1 If information had been available when you were selecting a lawyer, what types of information would you have used? Please check beside those statements which best describe what types of information you have used.

- (a) information about the fees (prices) which the lawyer would charge _____
- (b) names of lawyers who are experts in dealing with problems like yours _____
- (c) information as to personal attributes of the lawyer (e.g. friendly, understanding, etc.) _____
- (d) other (please specify) _____

4. How did you find out which lawyers would be capable of handling your case? Please check beside the appropriate answer.

- (a) friends _____
- (b) family _____
- (c) business associates _____
- (d) legal referral service _____
- (e) legal aid _____
- (f) other (please specify) _____

5. Did you call more than one lawyer before selecting one?
Yes _____ No _____

If no, please go on to answer question 6. If yes, please answer question 5.1.

5.1 What types of questions did you ask when you called the lawyers? Please place a check beside the appropriate answer(s).

- (a) fees (prices) to be charged _____
- (b) whether the lawyer was an expert in the field related to your problem _____
- (c) whether the lawyer was available to look after your case _____
- (d) where the lawyer's office was located _____
- (e) other (please specify) _____

6. In selecting a lawyer, people may have in mind more than one lawyer who could perform the task. In choosing a lawyer did you have more than one lawyer or law firm from which to choose? Yes _____ No _____

If no, please go on to answer question 7. If yes, please answer questions 6.1 and 6.2.

- 6.1 In making your final choice as to which lawyer to go to, did you ask others for information about the lawyers you had in mind? Yes _____ No _____

If no, please go on to answer question 7. If yes, please place a check beside those sources of information you used in evaluating the various lawyers you had in mind.

- (a) friends _____
(b) neighbours _____
(c) relatives _____
(d) other (please specify) _____

- 6.2 In seeking information from those mentioned in question 6.1, what types of questions did you ask? Please place a check beside the appropriate answer(s).

- (a) fees (prices) charged _____
(b) personal attributes (e.g. friendly, understanding) _____
(c) competency _____
(d) whether the lawyer was an expert in a particular area of law _____
(e) other (please specify) _____

7. Before engaging the lawyer you used in your last dealings with a lawyer, did you ask questions about fees? Yes _____ No _____

If yes, please answer question 8.1. If no, please answer question 8.2

8.1 Were you satisfied with the answers received? Yes _____ No _____

If not, why not? _____

How important was the price in your choice of lawyer? _____

Did you negotiate the fees to be charged? Yes _____ No _____

If yes, please describe the negotiation process. _____

8.2 Did you ever discuss the fee with your lawyer? Yes _____ No _____

If yes, when did you discuss the fees? Please check beside the appropriate answer.

- (a) before the bill was presented _____
(b) after the bill was presented _____

9. Do you know how the fees to be charged were determined?

- (a) set fee or percentage _____
(b) hourly rate _____
(c) don't know _____
(d) other (please specify) _____

10. Do you feel that you received good value from your lawyer in relation to the money spent? Yes _____ No _____

11. Was the fee charged
- (a) higher than expected _____
 - (b) lower than expected _____
 - (c) what you expected it to be _____

12. Did you have any complaints about the fees charged?
Yes _____ No _____

If no, please go on to question 13. If yes, what action did you take. Please place a check beside the appropriate answer.

- (a) discussed the complaint with your lawyer _____
 - (b) discussed the problem with another lawyer _____
 - (c) had the bill reviewed by the court (taxed) _____
 - (d) other (please specify) _____
- _____
- _____
- _____

- 12.1 What was the result of your action? _____
- _____
- _____
- _____
- _____

- 12.2 Were you satisfied with the resolution of the problem?
Yes _____ No _____

If not, why were you not satisfied? _____

13. If you had a complaint about the fees a lawyer charged, what are the possible courses of action you could take?

14. In your last dealings with a lawyer, did you have any complaints about the quality of service you received?

Yes _____ No _____

If yes, please go on to answer 14.1. If no, please go on to answer question 16.

- 14.1 What was the nature of the complaint? Please check beside the appropriate statement.

- (a) The lawyer did not communicate with you as to the progress of your case _____
(b) The lawyer was slow in dealing with the case _____
(c) The lawyer did not communicate in understandable language _____
(d) The lawyer did not consult with you in making decisions pertaining to your case _____
(e) The lawyer's advice was incorrect _____
(f) Other (please specify) _____

15. If you did have a complaint, what did you do with your complaint? Please place a check beside the appropriate answer(s).

- (a) Discussed the matter with your lawyer _____
(b) Discussed the matter with another lawyer _____
(c) Complained to the Law Society of Upper Canada _____
(d) Complained to Star Probe _____
(e) Nothing _____
(f) Other (please specify) _____

- 15.1 If you did take action, what was the result? _____

15.2 Were you satisfied with the result? Yes _____ No _____

If you were not satisfied, why not? _____

16. If you had a complaint about the quality of services you received from a lawyer, what are the possible courses of action you could take with your complaint? _____

17. The following are statements which might be made about a lawyer/client relationship. Please check those statements which would apply to the last matter in which you dealt with a lawyer.

- (a) Your lawyer was genuinely concerned about your problem _____
- (b) Your lawyer did not take the necessary time to deal with your questions _____
- (c) Your lawyer was hurried and rushed in dealing with your questions _____
- (d) Your lawyer carefully explained the aspects of your case. _____
- (e) Your lawyer was sympathetic and understanding _____

PART B.

1. In the last dealings you had with your lawyer, do you think that your lawyer

- (a) did everything possible on your behalf _____
- (b) could have done more _____
- (c) don't know _____

2. Do you think that your lawyer did

- (a) a competent job _____
- (b) an incompetent job _____
- (c) don't know _____

3. Which of the following statements would best describe your feelings about the lawyer who acted on your behalf in the last matter. Please place a check beside the appropriate statement.

- (a) I would consult the same lawyer again
regardless of the type of legal problem I had _____
- (b) I would consult the same lawyer again only if
I had a similar type of problem _____
- (c) I would never use the same lawyer _____

- 3.1 Please give reasons for your answer. _____
- _____
- _____
- _____

PART C

1. Law firms often employ non-lawyers to deal with certain aspects of the law. They have training in specific areas of the law and are called paraprofessionals. In dealing with your lawyer, have you been aware of the use of paraprofessionals?

Yes _____ No _____

- 1.1 Law firms also employ articling students. In dealing with your lawyer, have you been aware of the use of articling students?

Yes _____ No _____

2. Were you aware of any price adjustments being made for the use of an articling student or paraprofessional?

Yes _____ No _____

3. Please read the following statements and check in the appropriate box.

	Strongly Agree	Slightly Agree	Disagree Slightly	Disagree Strongly	Can't Decide
a) A person should not call on a lawyer until he has exhausted every other possible way of solving his problem.					
b) Lawyers are generally not very good at keeping their clients informed of progress on their cases					
c) Lawyers fees are usually fair to their clients					
d) Lawyers fees are usually too high					
e) Lawyers fees are usually cheap					
f) Many people do not go to lawyers because they have no way of knowing which lawyer is competent to handle their particular problem					
g) There are many things that lawyers handle e.g. writing wills, that can be done as well and less expensively by non-lawyers.					
h) Lawyers are prompt about getting things done					
i) Lawyers are prompt about informing clients about the progress of their cases					
j) Most people cannot afford the money to see a lawyer.					
k) Many people do not go to lawyers because they do not recognize the legal nature of the problem					
l) All lawyers charge the same fee for the same work					
m) A lawyer is independent in determining which fees to charge					

PART D

1. What qualities do you think are important in a "good" lawyer?

2. How important are the following characteristics in your choice of a lawyer?

	Very Impt.	Impt.	Unimpt.	Quite Unimpt.	Not con- sidered
Established Reputation					
Price					
Competence					
Location-ease of access					
Expertise					
Specific lawyer works there					
Other people use					
Honesty					
Qualifications					
Other (please specify					

PART E

1. Have you used more than one lawyer? Yes _____ No _____

If yes, why did you change? _____

2. Please use the space below to add any comments you would like to make.

THANK YOU FOR YOUR COOPERATION

PART F

Would you please answer the following questions about yourself.
This information is needed so that groups can be compared.

1. In what year were you born? 19____
2. Are you presently
 - (a) married _____
 - (b) single _____
 - (c) divorced _____
 - (d) separated _____
 - (e) widowed _____
3. What was the highest level of education obtained by yourself? Please place a check beside the appropriate answer.
 - (a) Primary school _____
 - (b) Some secondary school _____
 - (c) Finished secondary school _____
 - (d) Some university _____
 - (e) Finished university _____
 - (f) Completed post graduate work _____
 - (g) Some community college _____
 - (h) Completed community college _____
 - (i) Completed an apprenticeship _____
4. Do you have
 - (a) A friend who is a lawyer _____
 - (b) A relative who is a lawyer _____
5. What is your present occupation? _____
6. What is the income per year of the family. Please place a check beside the appropriate answer.
 - (a) Less than 5,000 _____
 - (b) 5,000 - 10,000 _____
 - (c) 15,000 - 30,000 _____
 - (d) More than 30,000 _____



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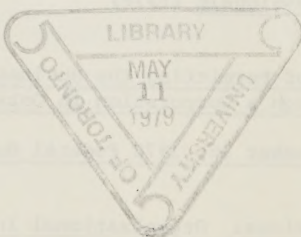
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